



The City of New York

Commission to Combat Police Corruption

Fifteenth Annual Report

of the Commission

September 2013

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PREFACE

This is the last Annual Report that the Commission will render to the current administration. We express our thanks to Mayor Michael Bloomberg, Police Commissioner Raymond Kelly, and Internal Affairs Bureau Chief Charles Campisi, for their continuous support of our efforts to assist in the process of combatting corruption in the NYPD.

We are convinced that the Commission plays an important institutional role in monitoring and augmenting the Department's anti-corruption program by providing independent but not hostile oversight. Our task has been greatly facilitated because we have been fortunate to work with a Police Commissioner who does not tolerate corruption and with a Mayor who committed himself to back our independent judgments regarding what we choose to examine, and who saw to it that we have the resources we need to perform our responsibilities. We have also benefited greatly from working with an Internal Affairs Bureau directed and staffed by dedicated and skilled individuals willing to let the chips fall where they may in the unpleasant task of policing fellow officers.

While a certain amount of corruption is inevitable in any major police force, the vast majority of NYPD officers we have encountered are honest and proud to be so. It appears that the Mollen Commission's observation, in 1994, that widespread organized corruption, tolerated by the police hierarchy, was a thing of the past, still holds true. Those police officers that do stray are subject to smoothly running and effective machinery to prosecute and punish them. By far and large the system is working.

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OVERVIEW

The Commission to Combat Police Corruption (the Commission) was established by Executive Order No. 18 in 1995 (the Executive Order).¹ The Executive Order mandated that the Commission monitor the efforts of the New York City Police Department (NYPD or the Department) to gather information, investigate allegations, and implement policies designed to deter corruption. It also gave the Commission the responsibility to maintain liaisons with the community and authorized the Commission to accept complaints or information regarding corruption, which the Commission would then forward to the NYPD or another agency, as appropriate.²

One way the Commission fulfills its mandate is through its review of pending and closed investigations conducted by the Internal Affairs Bureau (IAB).³ The Commission also reviews all closed disciplinary cases involving uniformed members of the service that are prosecuted by the Department Advocate's Office (DAO)⁴ in the Department's Trial Rooms. The Commission presents its findings from these reviews in its Annual Report. The Commission also conducts studies on particular units, policies, or systems within the Department in order to gauge the effectiveness of the NYPD's efforts to prevent and uncover corruption. To date, the Commission has published 25 of these studies.

¹ Executive Order No. 18 is included as the Appendix to this report.

² Executive Order No. 18, section 2(c) (February 27, 1995).

³ IAB is the bureau within the Department responsible for investigating allegations of corruption and serious misconduct against members of the service.

⁴ DAO is the division within the Department responsible for the prosecution of administrative disciplinary charges against members of the service.

This report, *The Fifteenth Annual Report of the Commission*, presents the Commission's findings based on its review of 118 pending and closed IAB investigations and 791 closed disciplinary cases.⁵ It also describes the Commission's ongoing, day-to-day operations.

⁵ The Commission staff reviews the IAB investigative files and the Department paperwork it receives in conjunction with the closed Department disciplinary cases. The staff performs an analysis on these cases, which is then reviewed by the Commissioners in connection with their review of the draft of this report. If the Commissioners do not agree with any analysis reported therein, the issue is discussed, and the report is edited to reflect the opinion of a consensus of the Commissioners.

MONITORING IAB INVESTIGATIONS

The Commission staff reviews IAB's pending and closed cases by examining the full contents of randomly selected investigative files. These files contain worksheets completed by the assigned investigator, which describe the investigative steps performed, and attachments that have been either produced or obtained by the investigator. Attachments can be in the form of documents, photographs, audio recordings, or video recordings. Staff members determine whether the investigation proceeded expeditiously and whether all necessary investigative steps were taken. In closed investigations, staff members evaluate whether, given the evidence collected, a correct disposition was reached with respect to each allegation.⁶ At the conclusion of each review, the Commission staff has the opportunity to confer with case investigators or their supervisors regarding any questions or concerns.⁷ Commission staff members report their findings and concerns to the Commissioners, as the Annual Report is prepared.

In its recent reports, the Commission chiefly has praised IAB investigations and noted that issues meriting criticism appeared infrequently in isolated instances.⁸ While the Commission agreed with the overwhelming majority of the actions under review for this report, the Commission found an increase in recurring issues in a small number of the cases it reviewed. Those issues are discussed further in the closed IAB investigation section of this report.⁹

⁶ An investigation can result in one of five dispositions, as set forth by the Department. If the disposition is "substantiated," the investigation found that "the accused employee has committed ALL of the alleged acts of misconduct." If the disposition is "partially substantiated," the investigation found that the "employee has committed PART of the alleged act(s) of misconduct." If the disposition is "unsubstantiated," the investigation found "insufficient evidence to clearly prove OR disprove allegations made." If the disposition is "exonerated," the investigation found the "subject employee(s) clearly NOT INVOLVED in ANY MISCONDUCT. Incident occurred, but was lawful and proper." If the disposition is "unfounded," the investigation found that "act(s) complained of DID NOT OCCUR or were NOT COMMITTED BY MEMBERS OF THIS DEPARTMENT." A.G. 322-11, "Official Communication – Preparation."

⁷ If these discussions do not sufficiently answer the Commission's concerns, the Commission may meet with IAB's highest tier of management.

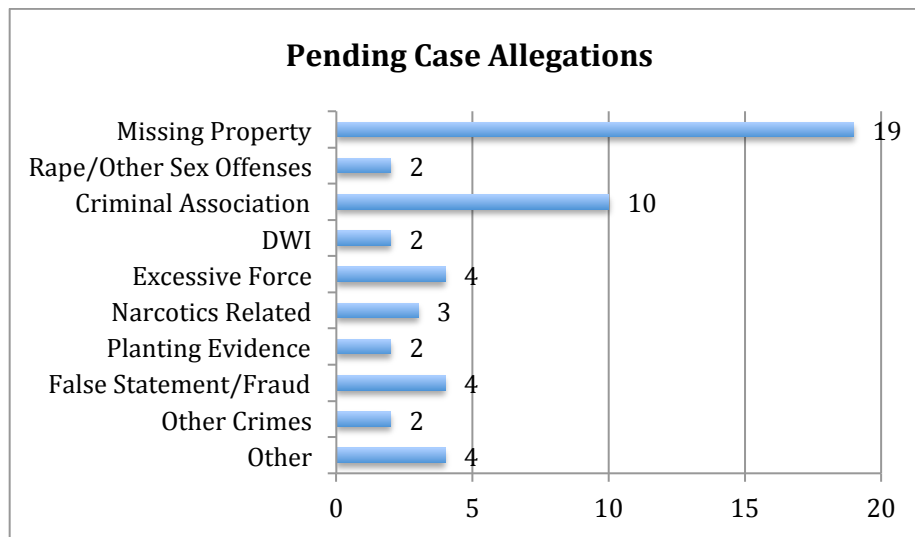
⁸ See *Fourteenth Annual Report of the Commission (Fourteenth Annual Report)* (February 2012) at pp. 5, 7, and 9; *Thirteenth Annual Report of the Commission (Thirteenth Annual Report)* (March 2011) at p. 5; *Twelfth Annual Report of the Commission (Twelfth Annual Report)* (February 2010) at pp. 10-16; and *Eleventh Annual Report of the Commission (Eleventh Annual Report)* (February 2009) at pp. 10-11.

⁹ See *infra* at pp. 5-23.

A. Pending IAB Investigations

The Commission examines pending IAB cases to monitor the progress of these investigations so that any recommendations or concerns are communicated to IAB while the case is still being actively investigated. During the last reporting period,¹⁰ the Commission reviewed 52 pending IAB investigations,¹¹ which represented approximately 6% of IAB’s corruption investigations. This represents only a portion of IAB’s caseload as IAB assesses cases as “corruption,” “misconduct,” or “outside Department guidelines.”¹²

A breakdown of the most serious allegation in each case reviewed is displayed below:¹³



In the *Fourteenth Annual Report*¹⁴ the Commission reviewed 63 pending investigations. The most prevalent allegations reviewed, then as now, were those involving missing property and criminal association. In the 45 pending investigations reported on in the

¹⁰ For the purposes of its review of IAB investigations, the Commission followed the calendar year of January 1 through December 31.

¹¹ Two of these investigations were also reviewed as part of the Commission's review of closed IAB investigations after these two cases were completed.

¹² These represent the most common assessments of allegations but are not exhaustive of all possible assessments.

¹³ Often, investigations contained multiple allegations.

¹⁴ February 2012 at p. 6.

Thirteenth Annual Report,¹⁵ these were also the most common allegations.

To conduct its review, the Commission chose cases randomly from lists of all pending cases provided by IAB. The only information on the lists from which the selection was made was the case number and the specific IAB group investigating the case. Therefore, the Commission did not have any information about the nature of the allegation or the subject officer when each case was selected. The Commission also continued to review some cases on which reviews were already underway. The Commission selected at least three cases from almost every IAB group.¹⁶ Twenty-three of these cases were closed during the course of the Commission's review. When a case was closed, a new investigation from the same IAB group was randomly chosen to replace it for the next review. IAB investigators and supervisors appeared receptive to the Commission's suggestions regarding the cases reviewed. The Commission did not find systemic issues in these investigations.

The Commission will continue to follow the remaining cases that are still pending in the coming year, and will select new investigations to review to replace the investigations that have been closed.

B. Closed IAB Investigations

The Commission reviews closed cases to assess the efficacy of IAB investigations and to make general recommendations that can be applied to future investigations.

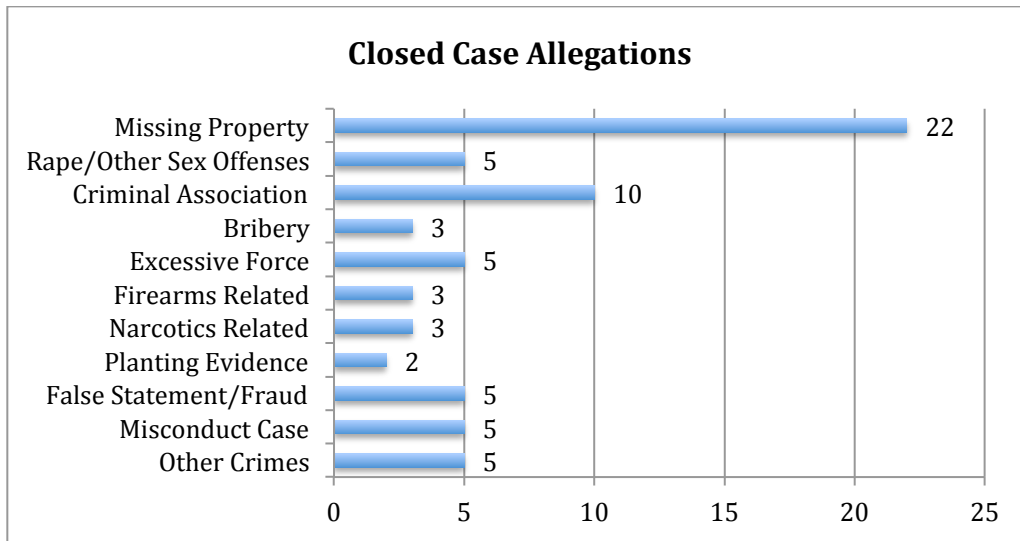
For this report, the Commission randomly selected cases to review from lists of all the closed cases that were regularly supplied by IAB. These lists contained only the case number

¹⁵ *Thirteenth Annual Report* (March 2011) at pp. 2-3.

¹⁶ IAB is divided into 24 investigative groups. These groups are divided based on geography or specialty. The Commission did not review investigations conducted by Group 2 (the Financial Investigations Unit), Group 7 (the Computer Crimes Unit), Group 9 (the group responsible for overnight, call-out investigations), Group 51 (the Police Impersonation Unit), Group 52 (the Integrity Testing Unit), Group 55 (the Surveillance Unit), and the Court Monitoring Unit. With the exception of Group 51, these groups primarily provide investigative support to IAB's remaining groups. Most of the cases investigated by Group 51 do not involve uniformed members of the service, so the Commission does not conduct file reviews of these investigations. While Group 7 conducts some of its own investigations, these matters generally do not involve allegations of corruption or serious misconduct. As Group 2 is carrying its own caseload, the Commission intends to review some of its cases in the coming year.

(which also identified the year the allegation was received) and the IAB group that investigated the case. During 2012, the Commission selected 4 cases from each IAB investigative group¹⁷ and reviewed a total of 68 cases¹⁸ (or approximately 6% of IAB’s corruption investigations).¹⁹

The following is the breakdown of the most significant allegations in the 68 cases reviewed:²⁰



As was previously noted in the *Thirteenth*²¹ and *Fourteenth Annual Reports*,²² the two most common allegations reported against Department members in the closed cases reviewed continued to be missing property and criminal association.²³ In prior audits of closed cases, the Commission observed occurrences of certain issues in IAB’s investigations that appeared sporadically and, therefore, did not merit comment in the Commission’s reports. Instead, these issues were addressed through discussions between the Commission and IAB

¹⁷ *Id.*

¹⁸ Two of these cases were also reviewed during the pending case review.

¹⁹ *See supra* at p. 4. Five of the cases reviewed by the Commission were assessed as misconduct cases. These cases were not included when calculating the percentage of corruption cases reviewed.

²⁰ *See supra* at p. 4, fn. 13.

²¹ *Thirteenth Annual Report* (March 2011) at p. 4.

²² *Fourteenth Annual Report* (February 2012) at p. 8.

²³ The Commission audited 60 closed investigations in its *Thirteenth Annual Report* and 64 closed investigations in its *Fourteenth Annual Report*.

commanding officers. In its last two Annual Reports, the Commission also agreed with the dispositions in all of the closed cases it audited.

In its most recent audit, the Commission noted a recurrence of some of the same isolated issues not previously discussed in its Annual Reports but raised in discussions with IAB. Despite the small sample of closed cases audited, an apparent increase in the frequency of these issues was observed. Given the small sample size, there is no basis to conclude that these issues are widespread; however, the Commission believed they are worthy of mention and continued attention. The Commission's findings regarding its recent audit of closed IAB investigations are described more fully below:

1. Issues Regarding Worksheet Summaries of Recorded Interviews

An essential component of most IAB investigations are the interviews, which are usually recorded. Each interview is then summarized and memorialized in a worksheet by the assigned investigator. There is no requirement that the summaries be completed contemporaneously to the interview or that the investigator review the recording after completing the summary. Indeed, days sometimes elapse between the interview and the completion of the worksheet summary. The content and level of detail contained in the worksheet summary appear to be left to the discretion of the individual investigator.

Of 68 closed cases reviewed for this report, the Commission discovered that in 4 separate instances, worksheet summaries of civilian and/or subject officer interviews²⁴ did not accurately reflect what was on the audio recording.²⁵ The summaries contained information that was not found on the audio recording itself, omitted relevant information, or mischaracterized how the interview unfolded or what the interviewee had stated.

Two examples of inaccurate worksheet summaries occurred in unrelated closed investigations. In these cases, the worksheet summaries contained portions of P.G.

²⁴ IAB maintains that they conducted 487 interviews in these 68 cases.

²⁵ These four instances occurred in three unrelated investigations.

interviews²⁶ that were found nowhere on the recordings themselves, and no source was indicated for the information.²⁷ For instance, as part of a summary of the official Department interview with the subject officer, one investigator memorialized in the worksheet the subject officer's explanations as to how he was able to afford three mortgages totaling nearly a million dollars on his salary alone. However, the audio recording of the P.G. interview contained no such discussion.²⁸ In the second case, an investigator memorialized the subject officer's repeated denials to questions ranging from off-duty drinking to being present during the execution of a search warrant at the complainant's home. Again, the actual recording of the interview did not contain either the investigator's questions or the subject officer's answers pertaining to these areas.²⁹

In the third case, which involved a complainant's missing property, relevant information was simply omitted from the worksheet. During a P.G. interview, the subject officer was heard stating that the complainant could have been intoxicated; however, he clarified that he did not personally observe the usual signs of inebriation, such as slurred speech or the smell of alcohol. In the accompanying summary, the investigator noted that the complainant could have been intoxicated but then failed to include the subject officer's own observations that there were no signs of intoxication.

²⁶ Patrol Guide section 206-13 authorizes the Department to interview officers during an official Department investigation (P.G. interview or official Department interview). Members of the service who refuse to answer questions during these interviews face suspension, and members found to have made false statements during these interviews are subject to termination from the Department, absent exceptional circumstances, which are determined by the Police Commissioner on a case-by-case basis. *See infra* at pp. 59-60 for a more extensive discussion of the Department's policy regarding members of the service who make false statements during P.G. interviews. Members of the service are entitled to have a union representative present during the interview, and subjects of the investigation are permitted to obtain counsel if either "a serious violation is alleged" or sufficient justification is presented for an attorney despite the alleged violation being a minor one.

²⁷ These cases were discussed with IAB commanding officers, who noted that the statements had been made during off-the-record conversations between the investigators and subject officers.

²⁸ While this was not the underlying allegation that prompted the investigation, the subject officer was previously disciplined for overtime abuse and required to pay thousands of dollars in restitution to the Department. The existence of these mortgages raised questions about the source of the subject officer's finances.

²⁹ According to an IAB commanding officer, there was either a malfunction of the audio equipment or the investigator failed to engage the recording device after a break in the interview. After this issue was brought to the commanding officer's attention, the investigator was instructed on the proper documentation of interviews.

In the last example, the investigator's summary of how the interview with the complainant unfolded was mischaracterized.³⁰ The summary stated that during the interview, the investigator challenged the complainant to make a controlled call to a friend after the complainant was confronted about his evasive and deceitful responses. The audio recording of the interview revealed, however, that the controlled call was the complainant's idea, and that he volunteered to make the call without any prompting from the investigator. Allegations against this subject officer were eventually unsubstantiated by the investigator in large part owing to IAB's assessment of the complainant's credibility.³¹

While the failure to accurately memorialize interviews did not affect the final dispositions of these three cases, the Commission believes that the best investigative practice is to review the audio recordings before finalizing the worksheet summaries. Failing to do so may lead the investigator to misremember what was discussed or omit relevant details. In turn, the reviewer, generally a supervisor, may be left with a distorted portrayal of the interviewee, whether it was a civilian or subject officer.

To the extent that supervisors do not listen to the recordings of the interviews, they may rely on the investigator's worksheets to determine what additional investigative steps are necessary or whether the investigation should be brought to a conclusion. A supervisor may conclude that the investigator's interview with the subject officer was thorough and complete and that all investigative avenues have been exhausted. Similarly, a supervisor may conclude that any allegations made by a civilian complainant who appeared to give deceptive responses in an interview ought to be unsubstantiated. In response to a draft of this report, IAB maintained that it was their policy that supervisors either be present during the interview or listen to the recordings. IAB also stated that supervisors do not rely on the worksheets to make decisions regarding the direction of investigations. It is IAB's position that supervisors

³⁰ The mischaracterization occurred in the same case as the second example cited above.

³¹ See *infra* at p. 14 for a further discussion of the investigator's justification as to why interviewing the witness who was on the controlled call was not necessary.

and investigators constantly confer about their cases, but these conferrals can be difficult to memorialize.

The Commission recommends that in all instances where feasible, the investigator should review the audio recording of every interview at least once. This is particularly imperative in situations where there is a gap between the time the interview took place and the time the summary of the interview is completed. All off-the-record conversations occurring during an interview should be memorialized in a separate worksheet so as not to give the mistaken impression that the information was obtained from a conversation that was recorded. The Commission further recommends that the investigator submit for review a draft of the summary to his immediate supervisor or a colleague who was present during the actual interview. A supervisor's feedback might eliminate occurrences of these issues and result in worksheet summaries that faithfully reflect the substance of the interview as well as capture all relevant information. IAB maintains that after an investigator completes a worksheet, it is considered a draft until the supervisor can review it and approve it prior to it being finalized. To ensure that important and relevant information is not excluded from the worksheet or that the information included on the worksheet was actually captured by the recording, the Commission recommends that this unsigned worksheet be reviewed by someone who was either at the interview or had listened to the recording.

In response to a draft of this report, IAB stressed that the worksheets are not meant to be transcripts of the interviews, but rather summaries of the material information discussed during the interviews. Whether information is memorialized in a summary is dependent on the individual investigator's determination of what is relevant to the investigation. The Commission acknowledges that the summaries are not meant to be a transcript of the interviews, and has not commented on every case where the summary did not exactly match what transpired on the recording.

The Commission stresses that it is important for the worksheets to be correct as complications of an evidentiary nature may arise when worksheets do not accurately reflect the audio recordings. Where a summary attributes certain statements to an interviewee but cannot be corroborated by the audio recording, it may become impossible to prove that the alleged statements were made.

2. Issues Relating to Civilian Interviews

One way for IAB to gather relevant evidence for an investigation is through civilian witness interviews. It is IAB's practice to interview the complainant as soon as possible, often in person, within 24 hours of the complainant's call to the Command Center.³² After this initial "call-out interview," IAB may conduct other civilian interviews depending on the evidence assessed during the initial stages of the investigation. While in most cases IAB diligently pursued witnesses, the Commission found issues relating to civilian interviews, such as overlooked potential witnesses and delays in conducting interviews, in 5 out of the 68 IAB closed cases that it reviewed for this report.

In three unrelated cases, IAB did not interview witnesses who might have provided relevant information, despite the fact that the investigating officers had the contact information for those witnesses in their files. In one case, the complainant allegedly sold a metro card ride to a civilian. After his arrest, the complainant claimed that the arresting officer stole his currency. The pedigree information of the civilian to whom the complainant sold the ride was in the subject officer's memo book, a copy of which was obtained by the investigator. The investigator did not contact the civilian to inquire about what he had observed at the train station during the subject officer's interaction with the complainant. IAB explained that the credibility of the civilian was an issue here since he purchased the metro fare from the complainant and was therefore presumably complicit in the crime. The

³² The Command Center is the central information center for IAB's hotlines to receive complaints against members of the NYPD. IAB personnel who input details of the complaints into the Department's computer systems staff these hotlines. The Command Center is open 24 hours a day, 7 days a week.

Commission believed that the civilian's possible relationship³³ with the complainant should be considered in determining his credibility, but should not be dispositive.

The second case involved a subject officer who was accused of taking bribes from a manager of three tow companies and protecting the manager's businesses by harassing competing tow companies at the manager's request. The manager had an extensive criminal history with ties to organized crime, of which the subject officer was aware.³⁴ Records demonstrated that over a two-year period, the subject officer and manager were in frequent contact with one another. In his official Department interview, the subject officer claimed that he used the manager as a confidential informant, although he never followed Department procedures to register him in that capacity.

The investigation revealed that information the manager relayed only to the subject officer led to the arrests of three defendants and the stop and frisk of two additional individuals. Two of the individuals arrested were employees of competing tow companies, while another arrestee was formerly employed by the manager.³⁵ In all of these encounters, the subject officer was the officer who personally interacted with the civilians.

With respect to the arrests of the three defendants, the investigator had obtained their arrest paperwork, all of which contained contact information. Despite having this paperwork and being informed that their criminal cases were resolved,³⁶ the investigator made no attempt to contact any of them.³⁷ With respect to the two men who were stopped by the respondent, the investigator did not obtain the stop and frisk reports during the course of the investigation,

³³ There was no indication in the case file that the potential witness had any relationship with the complainant.

³⁴ In fact, the relationship between the two developed after the manager was arrested by the subject officer's partner for grand larceny and falsifying business records.

³⁵ Because the investigator never ascertained the identities of the two men who were stopped but not arrested by the subject officer, the Commission has no way of ascertaining whether they also were employed at competing tow companies or were otherwise at odds with the manager.

³⁶ One defendant pled guilty at arraignment one year before the investigation even commenced, while the other two criminal cases were resolved in January 2011. IAB's investigation was completed in November, 10 months later.

³⁷ In a meeting held with IAB to discuss the contents of this report, IAB stated that the arrestees were not interviewed as a precaution to protect the identity of the tow manager.

which should have contained the pedigree information of the persons stopped.³⁸ Accordingly, none of the individuals arrested or stopped were ever interviewed by IAB.

Given the harassment allegation against the respondent, the investigator should have, at a minimum, attempted to contact the arrested individuals. The former employee who was arrested by the respondent could have confirmed the manager's unscrupulous practices, if any, against his competitors or provided insight into the nature of the manager's relationship with the respondent. Similarly, information obtained from interviewing the remaining two defendants associated with competing tow companies could have revealed whether the manager was obtaining the subject officer's assistance in harassing competitors, or alternatively, protecting the manager's businesses.

The investigation further uncovered that the manager was at the subject officer's disposal whenever towing services were needed. Indeed, on two separate occasions, the respondent called the manager directly to tow a Department vehicle as well as a stolen vehicle and various stolen car parts. Within minutes, the manager responded to the scene.

Although pedigree information for the owners of the stolen car and car parts were readily available to the investigator, there was no attempt to contact any of these owners. Given the bribery allegation, the investigator should have contacted the owners to determine whether the manager had billed them for towing and/or storage fees. Not only could this information have established that the manager and subject officer enjoyed a mutually beneficial relationship, but it might have revealed the extent of the inducements being exchanged between them.

³⁸ After receiving a draft of this report, IAB obtained the electronic version of the relevant stop and frisk reports. There was no pedigree information contained in these reports. The Commission presumes that the pedigree information was removed to comply with state law enacted in July 2010 prohibiting the electronic storage of identifying information for people who were stopped, but not arrested or summonsed.

After learning about these stops, the investigator could have determined whether the subject officer retained his handwritten copies of the reports. As these encounters were conducted in 2009, prior to the enactment of the 2010 law, the handwritten reports should have contained the relevant identifying information. Alternatively, the investigator could have requested the subject officer's memo book for the date of these stops to determine if any identifying information for these men was noted.

Although at the conclusion of the investigation, IAB substantiated allegations of computer misuse, utilizing an unregistered confidential informant, and failing to make proper entries in his memo book, IAB unsubstantiated the bribery and harassment allegations.³⁹ The Commission is unable to predict what information these civilians/witnesses would have revealed, or whether such information would have altered the outcome of the bribery and harassment allegations. Because contact information for at least three of these individuals was readily and immediately available to the investigator, it would have required little effort to contact them.

IAB also decided not to interview two potential witnesses who allegedly had information about police misconduct in a case that involved “flaking”⁴⁰ allegations against several subject officers. The first potential witness in that case was the complainant’s friend, who supposedly had information about the subject officer who was accused of flaking the complainant. IAB had the friend’s telephone number on file because IAB had previously placed a controlled telephone call to her. The complainant’s friend was never interviewed by the investigator, who concluded that this witness’ credibility was at issue based on statements by another friend of the complainant’s who opined that the witness would lie for the complainant. IAB further explained that it was unnecessary to interview this witness because they had already established that the complainant was not credible.⁴¹ Finally, IAB stated that it was unnecessary to conduct an interview with this witness as they had already conducted a controlled telephone call with her, which they considered to be a superior investigative step to an interview.

³⁹ The subject officer received charges based on the substantiated allegations. He forfeited 20 vacation days for this misconduct and was administratively transferred. An additional allegation for failing to utilize a Department tow truck was also substantiated. IAB’s investigation also led to disciplinary actions against three other members of the service.

⁴⁰ The term “flaking” refers to planting evidence on suspects.

⁴¹ As noted in the previous section, the worksheet that described one of the interviews with the complainant was inaccurate in the way it characterized the complainant’s interaction with the investigator, which was a factor used to assess this complainant as incredible. *Supra* at p. 9.

A second potential witness in the same case who was never interviewed by IAB allegedly worked as a grocery clerk at the store on which IAB was conducting surveillance. The clerk supposedly heard another police officer state that the subject officer “flaked” the complainant. Despite being physically present in the store on several occasions, the investigator made no effort to confirm that this potential witness actually worked in that store, and never attempted to interview him. IAB maintained that such an interview would have hurt the investigation because the clerk was alleged to be friendly with the subject officer and, therefore, might have tipped him off that IAB was asking about him. In addition, IAB maintained that it was unnecessary to interview this witness as the investigators had already established that the complainant was untruthful.

It was the Commission’s position that those two witnesses should have been interviewed since on its face they appeared to have relevant information that addressed the crux of the allegations. Better practice would be to interview witnesses who might provide relevant information. Concerns about the witnesses’ credibility could be factored into any assessment of the usefulness and validity of the information provided. Furthermore, if there was a concern that any witness would disclose the interview to the subject officer, thereby alerting him to the investigation, that witness could have been interviewed later in the investigation, at a time when the revelation would no longer jeopardize the investigation.

In another case, the Commission found that IAB did not use the contact information provided by a complainant during the call-out investigation to conduct a follow-up interview. This case involved unnecessary force allegations against six subject officers. During the call-out interview, a homeless complainant, who was allegedly injured during his arrest, provided IAB with a location that he frequented to wash store windows. When the investigator tried to re-interview the complainant, he did not check that location, and ultimately indicated that he could not find the complainant. The investigator tried unsuccessfully to locate the complainant through various computer checks. IAB commented that a follow-up with this

complainant was unnecessary because he had been thoroughly interviewed during the call-out by another investigator.

The Commission also noted issues with the timing of the civilian interviews in two cases. The first case involved allegations of improper sexual conduct against a school safety agent. It took IAB four months to interview a 17-year-old student who allegedly had sexual relations with the subject officer, despite the fact that another witness identified that student by name at the start of the investigation. IAB justified the delay as case strategy and explained their concern that the student could have disclosed the ongoing investigation to the subject officer. Conversely, they stated that it is IAB's practice to immediately interview only those students who voluntarily disclose sexual misconduct. While the allegations in this case were substantiated,⁴² it is the Commission's position that this student should have been interviewed much sooner in an effort to prevent any further alleged sexual misconduct between the student and the school safety agent. Additionally, the same anonymous caller had made a prior allegation that the subject agent had inappropriately touched an unidentified student. The second complaint, which initiated the transfer of the investigation to IAB, also alleged that the subject officer was having sexual relations with multiple students and had impregnated one of them. During the period in which the investigator delayed interviewing the identified student, the subject agent was able to remain in a position where he had access to other students.

The other case involved allegations that unidentified subject officers received bribes from nightclubs, one nightclub in particular, to overlook numerous illegal activities, including drug dealing. Investigators conducted a ruse operation in one of those nightclubs, during which they interviewed a manager who worked there. During that interview, the manager did not mention that he knew any members of the NYPD. Later in the investigation, IAB learned that this manager had been terminated, but the investigator did not make subsequent efforts to

⁴² The Department is seeking to terminate this agent.

re-interview him soon after learning of his termination. IAB believed that had the manager known any members of the NYPD, he would have mentioned this during the original contact. However, the Commission believed an immediate attempt should have been made to interview the manager a second time; as a former employee, he might have been more willing to disclose information that was relevant to the investigation.

It is difficult to ascertain what information a potential witness has and how it will alter the course of the investigation without speaking with that person. In many of the aforementioned cases, IAB would not have had to expend undue resources to contact the potential witnesses, as the investigator had already obtained their contact information in the course of the investigation. Where the interview can be conducted via a telephone call or the potential witness' contact information is readily available, the Commission recommends that rather than speculate, IAB attempt to conduct the interview to determine whether the witness has any relevant information.

3. Issues Relating to Strategy and Supervisor Input

In the *Fourteenth Annual Report*,⁴³ the Commission commented on monthly team leader reviews, which are conferrals between IAB supervisors and case investigators. The Commission noted that it envisioned these consultations being used to develop case-specific strategies to shape the course of each investigation. However, the Commission found that many times the directions of the team leader were being repeated, month after month, even when recommended steps had already been taken. When a team leader's suggestions had not been taken, there was no explanation as to why the supervisor's directions were seemingly ignored. As the Commission is more concerned that meaningful conferrals take place than steps be described, the Commission recommended that each consultation between a case investigator and the supervisor be noted without the enumeration of specific steps to be taken in order to document that the consultation occurred. The Commission also encouraged

⁴³ February 2012 at p. 9.

investigators and their team leaders to engage in creative and meaningful strategizing concerning the direction of the investigations. Subsequent to the publication of the report, the Executive Director of the Commission discussed this issue with the commanding officers of IAB. Repetitive directions were not as frequently observed in the cases examined by the Commission during the past year.

The Commission believed, however, that these conferrals could still be better used either to plan immediate investigative steps or to review information that the investigator has already gathered to make sure that the information was being properly analyzed. Team leader reviews can be used to determine what investigative steps should be followed and the manner in which they should be implemented.

Team leader conferrals can also be used for investigators to discuss information that they have obtained during the course of the investigation. These discussions can be used as opportunities to review the documentary evidence obtained and the investigator's analysis of that evidence. This type of review can decrease the likelihood that an investigator will inadvertently miss information that has investigative value.

These conferrals can also be used to ensure that investigators take time-sensitive steps as soon as practicable. For example, in this past review, the Commission noted two closed cases where video canvassing was not conducted at the start of the investigation.⁴⁴ The Commission continues to encourage IAB to adhere to its stated policy to conduct searches for video early in the investigations, as this can be the best evidence to support or refute an allegation of misconduct.

⁴⁴ In last year's review of pending investigations, the Commission also commented on the necessity of canvassing early in the investigation to determine whether video surveillance may have captured the alleged incident. *Fourteenth Annual Report* (February 2012) at p. 7.

4. Issues Relating to Documentation

Two years ago, the Commission commented on the importance of properly documenting all investigative steps close in time to when those steps are performed.⁴⁵ Prompt and thorough documentation of investigative steps is important so that a new investigator does not unnecessarily duplicate steps if a case is transferred, and so supervisors can properly assess the investigations and dispositions reached. In last year's review, the Commission noted improvement in the documentation of investigative steps.⁴⁶ There were, however, some documentation issues noted in this year's review. For example, in one case previously discussed,⁴⁷ the investigator made several attempts to gain information about a club employee from the club's attorney. These unsuccessful attempts were documented in the case file. Seven days after the investigator's last conversation with the attorney, the investigator noted that he had informed his team leader that the attorney had provided him with the full name and birth date of the sought-after employee. However, that conversation with the attorney was not documented. This omission could raise questions as to the actual source of the information as the prior worksheets documenting the uncooperativeness of the club's attorney appeared inconsistent with the attorney suddenly providing the requested information.

5. Issues Relating to Dispositions

This year, the Commission agreed with the overall disposition of every case reviewed. However, we disagreed with the disposition of a specific, isolated allegation in one case.⁴⁸

This case began with allegations that an officer was working with and taking bribes from a tow company to protect the company from law enforcement action and to harass the

⁴⁵ *Thirteenth Annual Report* (March 2011) at p. 5.

⁴⁶ *Fourteenth Annual Report* (February 2012) at p. 9.

⁴⁷ *See supra* at pp. 16-17.

⁴⁸ The Commission agreed with the dispositions given to the remaining allegations in this case. The Commission recognizes that, oftentimes, decisions regarding whether a certain allegation will be substantiated are made in conjunction with DAO. If DAO did not agree that there was sufficient evidence to prove an allegation, that allegation would ultimately be unsubstantiated by IAB. This was true even in those cases where IAB initially believed the allegation should be substantiated.

company's competitors.⁴⁹ During the course of the investigation, the main subject officer's supervising sergeant was questioned. In total, there were three official Department interviews with the sergeant, who was added as a subject officer in the investigation. As part of these interviews, the sergeant was asked about an incident where the main subject officer, Police Officer X, had asked the tow company at issue to transport a disabled Department vehicle, instead of following Department regulations that required a Department tow truck be used. In the first interview, three months after the incident with the disabled vehicle, only general questions were posed about whether the sergeant was aware that Police Officer X had ever called the target tow company to transport disabled Department vehicles.⁵⁰ The sergeant denied being aware that an outside tow company was ever called for this purpose.

Approximately six weeks after the first Department interview, the sergeant was questioned again. During this second interview, the investigator asked the sergeant pointed and specific questions regarding an incident where Police Officer X was driving to Nassau County and the Department vehicle he was using became disabled. The sergeant stated that although he was aware there were mechanical problems with Police Officer X's vehicle on the incident date, he did not know any of the particular details. Specifically, he denied observing that the target tow company transported the vehicle back to the Command. The sergeant stated that because he was on patrol when Police Officer X returned to the Command, he did not know how the disabled Department vehicle was transported there.

After the sergeant's second interview, Police Officer X and his partner told investigators that the sergeant had in fact arrived in Nassau County where the vehicle was disabled and had observed the target tow company remove the vehicle from the scene. According to those officers, the sergeant had also traveled back to the Command with Police

⁴⁹ See *supra* at pp. 12-14 for further discussion about this case.

⁵⁰ At the time of the sergeant's first interview, Police Officer X had already admitted to using the target tow company for this purpose, but had not yet given a description of the incident that was the subject of the sergeant's false statements.

Officer X and his partner. Additionally, the investigator learned that the sergeant followed the target tow company as it towed the disabled vehicle back to the Command.

The sergeant was then interviewed a third time. He stated that after reviewing his answers from the prior hearing, he realized that he did not recall the events correctly. This time, the sergeant admitted to being present at the scene of the disabled Department vehicle and witnessing the target tow company transport the vehicle. He stated that although it made him uncomfortable knowing that this was occurring in violation of Department guidelines, he did not question Police Officer X about using this tow company, and instead decided to “let it go.” When asked about his inconsistent responses in his prior interview, the sergeant claimed that he had not recalled the incident at the time of the interview, and did not recall the incident until some time after the interview took place. He denied that he intentionally made a false statement and explained that during the second official Department interview, he was on medication to treat kidney stones.

Although the sergeant received charges and specifications for failing to properly supervise Police Officer X, failing to notify IAB after becoming aware that Police Officer X used a non-Department tow truck to transport a disabled Department vehicle, and failing to make memo book entries,⁵¹ there was no allegation added against the sergeant for making a false statement in an official Department interview.⁵² There was also no documentation in the file regarding a conferral with DAO about whether a false statement charge would be appropriate. However, IAB added an allegation against the sergeant for impeding an investigation based on the inaccurate statements he gave at his second official Department interview, but this was unsubstantiated at the conclusion of the investigation. IAB documented that DAO did not believe there was sufficient evidence to prove this misconduct.

⁵¹ The sergeant also received discipline at the command level for computer misuse and failing to safeguard his computer code.

⁵² See *infra* at pp. 61-69 for the Commission’s analysis of disciplinary cases involving the making of official false statements.

Having listened to the audio recordings of the sergeant's interviews, the Commission believed that the sergeant's responses may have begun as general denials, but became a false description of events in subsequent interviews. Furthermore, during the first interview, the sergeant admitted that it was not routine practice for his unit to use civilian tow companies to tow Department vehicles. If the sergeant's statement that this was not a routine practice is believed, he should have recalled such a significant deviation from his unit's routine, especially because the first interview took place a mere three months after the incident.

As the sergeant admitted his knowledge of the unauthorized tow only after two other officers were officially interviewed and placed him at the scene and because the sergeant's responses during his second official interview created a "false description of events" that were not mere denials, the Commission believed that an allegation of making a false statement should have been added and substantiated.⁵³ At the very least, the allegation that the sergeant impeded an investigation should have been substantiated. In discussing this case with DAO's executive staff, they explained that they were only aware of two official Department interviews and indicated that the assistant advocate, who handled the disciplinary charges for the sergeant, was no longer employed by the Department. DAO further stated that given the existence of the third interview, some discipline for this conduct would have been appropriate.

6. Conclusion

The Commission continued to find that IAB conducted the majority of its investigations properly and in a manner designed to detect corruption and misconduct. However, the Commission noticed an increase in the frequency in occurrence of some matters that had been previously observed only occasionally. While we recognize that in any operation, these types of errors may occur, there should be continued vigilance to reduce the occurrence of these issues. The Commission will continue to monitor these matters in its

⁵³ Patrol Guide section 203-08 sets forth the Department's false statement policy. Those false statements that are only mere denials of the misconduct without a fabrication of a false version of events are excluded from the ambit of the false statement policy. See *infra* at pp. 59-60 for a description of the Department's false statement policy.

future audits and hopes to see a reduction in its next review.

While this report was being finalized, IAB invited the Commission to attend training being conducted for team leaders. This training instructed team leaders on the importance of accurately summarizing interviews, interviewing all possible witnesses when feasible, and documenting all investigative steps. The training also encouraged team leaders to review documentary evidence obtained by the investigator to determine whether the investigator properly analyzed relevant evidence and to listen to recordings of all interviews before approving the worksheets summarizing those interviews.

REVIEW OF IAB TRAINING

As part of its monitoring responsibilities, the Commission periodically attends and evaluates IAB training sessions.⁵⁴

During this past year, the Executive Director attended a lecture presented by the Assistant Special Counsel to the Police Commissioner to incoming IAB investigators regarding official Department interviews. As the training of incoming IAB personnel is very important, the Commission applauded the Department for introducing a new lecture on the practical aspects of conducting an official Department interview to IAB's full day training on this topic. The lecturer discussed the goals of, preparation for, and strategies to use in interviews, as well as the evaluations of interviews after their conclusion, and included good practical suggestions and an informative summary of the basic steps that should be performed prior to and during the official Department interview. After observing the initial lecture, the Executive Director met with the lecturer to make suggestions to further enhance the training on this topic. Overall, this lecture was a useful addition to IAB's existing overall training.

The Commission's new staff attorneys⁵⁵ also attended sections of IAB's Office of Professional Development's training for newly assigned investigators. This training gave a very basic overview of the mission of IAB. Some topics discussed were IAB's proactive measures such as integrity tests⁵⁶ and debriefings; P.G. interviews; the role of DAO; preparing for Steering Committee Meetings; and investigations into specific categories of misconduct, including crimes of a sexual nature, driving while intoxicated, and allegations involving the unnecessary or excessive use of force.

⁵⁴ Executive Order No. 18, section 2(a)(iii) (February 27, 1995).

⁵⁵ *See infra* at p. 78.

⁵⁶ In an integrity test, investigators create an artificial scenario that simulates a situation the subject officer might encounter during the performance of his duties. This scenario tests the officer's response to the situation to determine if the subject officer performs as the Department requires.

The Executive Director and staff members chose to observe those topics that seemed most relevant to the Commission's work. Unfortunately, Superstorm Sandy truncated some of the staff's attendance at this training.⁵⁷ The Commission intends to resume its observations of this training in the coming year.

⁵⁷ This was not the only issue the Commission faced as a result of Superstorm Sandy. The Commission's offices were located in the mandatory evacuation zone, and the building that housed these offices was damaged and remained closed during much of the drafting of this report.

REVIEW OF CLOSED DISCIPLINARY CASES

DAO prosecutes the administrative cases against members of the service based on substantiated investigations conducted by various internal⁵⁸ and external investigatory bodies.⁵⁹ The Department Trial Commissioners oversee plea negotiations, try cases where no plea agreement is reached, and recommend administrative penalties to the Police Commissioner after a trial or a plea agreement is reached. The Police Commissioner is responsible for the final decision in all cases.

The Commission reviews all disciplinary cases that involve uniformed members of the service⁶⁰ to evaluate whether, in its view, the Department imposes proportionate and adequate penalties and pays appropriate attention to misconduct. It is understood that the Commission's review of these cases cannot result in any adjustment to the penalty in any particular decided

⁵⁸ In the Department, internal investigations into corruption or misconduct fall under the jurisdiction of IAB or one of the Department's borough or bureau investigation units. Borough and bureau investigation units usually investigate cases that range from landlord-tenant disputes and most domestic violence complaints to allegations that officers have stolen property, other than money, credit or debit cards, or valuable jewelry. The units are divided by geography or specialty. The decision about which group will investigate a case is based on where the subject officer is assigned. If the subject officer is not identified, the case is assigned based on the location of the incident.

Less serious infractions may be investigated by the subject officer's command. These command-level investigations can also result in charges being brought by DAO against the subject officer.

⁵⁹ Through a revision in the City Charter in 1993, the handling of civilian complaints against police officers was restructured and the Civilian Complaint Review Board (CCRB) was created. CCRB has concurrent jurisdiction with the Department to investigate allegations against police officers for the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language. In the past, DAO prosecuted cases that were investigated and substantiated by CCRB. During the past year, however, CCRB began prosecuting its own cases before the Department's Trial Commissioners as part of a pilot project. The Commission also analyzed these CCRB cases, which are a small part of this reporting period's review. The Commission expects to review more of these CCRB-prosecuted cases for its future Annual Reports.

⁶⁰ The paperwork the Commission reviewed includes: the charges that were levied against the subject officer; the disposition sheet, noting the final disposition against the subject officer; and Department memoranda prepared by the commanding officer of the investigative entity that substantiated the allegations. If there was a plea agreement, the plea memorandum describing the misconduct, the officer's disciplinary and performance history, and the rationale behind the penalty offered is included. If there was a trial or mitigation hearing where the subject officer admitted to the misconduct, but testified in an effort to explain his behavior and justify a lesser penalty, the Trial Commissioner's decision is included. This decision consists of a summary of the testimonial and physical evidence presented, along with the Trial Commissioner's findings and recommendations. If the Police Commissioner did not agree with either the Trial Commissioner's factual findings or his recommended penalty, a memorandum from the Police Commissioner explaining his reasoning is also included. When conducting its analyses of these cases, the Commission's sole source of information regarding the subject officer's actions was this paperwork. The Commission acknowledged that it did not review the entire file or listen to the officer's recorded statements in many of these cases. However, some of the underlying investigations were reviewed for the Commission's upcoming report about how the Department disciplines officers who make false official statements, or as part of its review of IAB pending and closed investigations.

case. The review is offered only for guidance in future cases.

For this report, the Commission reviewed 791 disciplinary cases adjudicated between October 2011 and September 2012. Within that group, the Commission focused particular attention on two categories of cases, serious off-duty misconduct and false statement cases. These categories have been the subjects of prior Commission reports,⁶¹ and the Commission continued to pay specific attention to them because of their significance and their potential consequences, including the possibility that other officers will cover up the misconduct of their colleagues.

The serious off-duty misconduct cases reviewed by the Commission included 92 alcohol-related cases, 13 firearm-related cases, and 101 domestic incident-related cases. The Commission was specifically concerned with alcohol-related cases because the effects of an intoxicant on an officer's judgment can lead to further misconduct and potential injuries to the officer or others. Similarly, firearm-related misconduct and allegations involving domestic incidents often carry a high potential for violence.

The Commission reviewed 157 cases involving a false statement or fraudulent misconduct. The Commission focused on false statement cases because an officer who has committed perjury, made an official false statement, or falsified documents has impaired his or her credibility. This negatively affects the officer's utility as a witness in court, and may impact the Department's overall integrity when the public learns that officers have engaged in some type of falsehood. This can further undermine the public's confidence in our criminal justice system. Sufficiently severe discipline can serve as a deterrent to officers lying to cover up for the misconduct of their colleagues, thereby piercing "the blue wall of silence."

In addition to its focused analyses, the Commission reviewed all 791 cases to

⁶¹ See *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998) and *The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements* (December 12, 1996).

determine whether the penalties imposed seemed appropriate, given the following factors: the misconduct committed, the officer's disciplinary and performance history, and the evidence available to the Department for its prosecution of the case. In assessing the adequacy of the imposed discipline, the Commission also considered the penalties received by officers who were found guilty of similar misconduct.

A. General Cases

Aside from the cases involving serious off-duty misconduct and false statements, which are discussed separately below,⁶² the Commission disagreed with the penalty imposed in only 8 cases⁶³ from the general group of 542 cases.⁶⁴

In the first case, the subject officer, an 11-year member of the service, used Department computers on two occasions to conduct unauthorized inquiries on a male friend. Those inquiries revealed that her friend had two convictions for Attempted Robbery in the Second Degree, one of which was also accompanied by a conviction for Criminal Possession of a Weapon in the Third Degree. After conducting the unauthorized computer checks, which placed her on notice that she was associating with a criminal in violation of Department policy, the respondent continued to associate with this person. This misconduct was uncovered when an assistant district attorney reviewed recorded telephone calls between the subject officer and an inmate at Riker's Island who had a pending rape case. This inmate was the cousin of the subject officer's male friend. In one recorded conversation, the subject officer was heard providing advice to the inmate regarding his possible legal avenues, defenses for DNA sampling, and identification procedures. The officer was also heard

⁶² See *infra* at pp. 40-74.

⁶³ The Commission generally mentioned only those cases where it believed that discipline should have, but did not, include either placement on dismissal probation (described below at p. 29, fn. 65), or separation from the Department. Because the Commission was not present during the Department hearings, and therefore was not in a position to assess the evidence that was presented to the Trial Commissioners, the Commission did not make any evaluations regarding the Trial Commissioners' factual findings.

⁶⁴ This number includes 60 cases that the Commission reviewed in connection with the Uncharged False Statement section of this report. See *infra* at pp. 73-74.

providing the inmate with information she had apparently obtained by accessing the complaint report that led to his arrest.

In her official Department interview, the respondent denied accessing the complaint report or disclosing the information to the inmate. She admitted, however, to accessing Department computers to conduct unauthorized inquiries on potential boyfriends whenever she met them. The respondent had a minor disciplinary history from five years earlier. She received average to above-average ratings on her performance evaluations.

As a penalty, the respondent forfeited 30 vacation days. The Commission believed that, at a minimum, the respondent should have been placed on dismissal probation.⁶⁵ In this case, the respondent accessed Department computers on two occasions for her own personal benefit and admitted to accessing Department computers for personal reasons on other occasions. After learning that her friend had a criminal background, the respondent continued her friendship with that person. Finally, the respondent was overheard advising an inmate regarding his legal options and divulging Department information to him, which she falsely denied during her official Department interview.⁶⁶ The respondent not only severely damaged her own credibility, but also placed the interests of her friend and his cousin above those of the Department; therefore, a more serious penalty was warranted. Further, a penalty including dismissal probation would have allowed the Department to summarily terminate the respondent if it was discovered during the probationary period that she continued to associate with her friend.⁶⁷

⁶⁵ An officer who is placed on dismissal probation is considered to be dismissed from the Department, but that dismissal is held in abeyance for a one-year period, which is extended by any time the officer is not on full-duty status. During this period, the officer continues his or her employment with the Department. If the officer engages in further misconduct or if the Department discovers prior misconduct, the officer's employment may be terminated without the need for an administrative hearing into the newly discovered allegations. An officer who completes the dismissal probation period without incident is restored to his or her former status.

⁶⁶ Mere denials are not subject to the Department's false statement policy. Accordingly, the Commission did not include this case in its analysis of false statement cases.

⁶⁷ DAO maintained, as it has in the past, that dismissal probation is not used as a monitoring device and there are other monitoring programs in the Department. According to DAO, dismissal probation is solely used to

The second case was factually similar. After pleading guilty to computer misuse and criminal association, the respondent, a seven-year veteran, forfeited 40 vacation days. The respondent's boyfriend was arrested for armed robbery and had a prior criminal history, of which he claimed the respondent was aware. In her official Department interview, the respondent denied being aware of her boyfriend's past criminal history, but admitted to being aware of his most recent armed robbery arrest. She also admitted to using Department computer systems for her own personal use, including running a computer check on her boyfriend, and attending her boyfriend's court date. At this interview, the respondent was instructed by a sergeant from IAB to cease all contact with her boyfriend. Approximately one month later, IAB investigators observed the boyfriend exiting the respondent's apartment building and operating her vehicle. They observed the respondent exit the same building approximately 90 minutes later.

At a second Department interview, the respondent admitted to continuing her association with the boyfriend in order to divide up their personal property and so that he could pick up his belongings. She also confirmed that she had spoken with him over the telephone more than twice a week despite the previous order to cease all contact. Although subsequent surveillances did not disclose further contact between the two, the Commission believed dismissal probation should have been imposed.

In last year's Annual Report,⁶⁸ the Commission discussed a case where the subject officer continued to associate with a girlfriend who had a criminal history, despite being ordered by an IAB lieutenant to cease all contact. The Commission commented that a Trial Commissioner's recommended penalty of dismissal probation plus the forfeiture of 30 vacation days was more appropriate than the final penalty of 40 vacation days, noting that "if the respondent continued to have contact with this woman, the Department would then have

give officers, who would otherwise have been terminated, a second chance to retain their employment.

⁶⁸ *Fourteenth Annual Report* (February 2012) at pp. 28-29.

the option of summarily terminating his employment instead of conducting further proceedings on the matter.”⁶⁹ The Commission held the same view here. The respondent's alleged reason for her conduct did not fully explain why she continued to maintain contact with her boyfriend. Because she willfully disobeyed the order of a superior and continued to see her boyfriend, there was a possibility that once enough time had passed, the respondent would feel sufficiently comfortable to resume the relationship. Should she do that, dismissal probation would give the Department the means to end her employment without further administrative proceedings.

In the third case, the respondent, a sergeant who was a 17-year veteran, was charged with preventing or interfering with an official Department investigation, failing to notify IAB about an allegation of corruption or serious misconduct involving a member of the service, and failing to conduct a proper investigation. For this misconduct, he forfeited 20 vacation days.

This case arose out of a motor vehicle accident in which an off-duty detective struck a tree. The detective flagged down a Department vehicle, which was occupied by Police Officers A and B. The detective identified himself as a member of the service to the responding officers and advised them that he had been in an accident. He further instructed these officers that they had two choices, either “take him home or forget this ever happened.” Without ascertaining his identity, Officers A and B told the detective to wait while they examined the accident scene. When they returned, the detective had fled the location, leaving his vehicle.

Officers A and B notified their patrol supervisor, the respondent, about this incident. When the respondent arrived at the scene, he did not conduct an investigation to ascertain the detective's identity. Instead, he called for a tow truck and waited more than an hour for the truck to arrive. After the tow truck arrived, the respondent verified the detective's identity

⁶⁹ *Id.* at p. 29.

through a parking placard that was in his car. At this point, the respondent notified the duty captain of the accident. However, he initially failed to mention to the duty captain the detective's interaction with Officers A and B, and he failed to tell the duty captain that the detective had fled the scene. He provided this highly relevant information to the duty captain three hours later.

During the three-hour delay, the duty captain called upon the Aviation, Harbor, and Canine Units to search for the vehicle's occupant because the accident had taken place near a body of water and the whereabouts of the occupant were unknown. This caused the expenditure of unnecessary resources, possibly diverting them from other emergencies. The respondent's omission also delayed the investigation into whether the detective was driving while intoxicated. Once the identity of the detective was established, he was contacted at his residence and ordered to respond to a Department facility. There, he was deemed unfit for duty.

In his official Department interview, the respondent stated that Officers A and B did not tell him that the person who flagged them down was the same person involved in the vehicle accident. The respondent also claimed that he did not immediately tell the duty captain about the detective's interaction with Officers A and B because he did not want to assume the detective was involved in the accident until there was a positive identification.

The respondent had a disciplinary history from seven years earlier. At that time, he received discipline at the command level and forfeited two vacation days for failing to notify the duty captain of the description of an escaped prisoner. He was rated a 6 out of 10 by his commanding officer and had a 3.6 average on his last 5 evaluations.⁷⁰ He had also been awarded a total of seven Department medals.

While the Commission agreed with the charges levied by DAO based upon the

⁷⁰ Performance evaluations are rated on a scale of one to five with one being the lowest and five being the highest.

available evidence, the rational inference was that the respondent purposefully delayed the investigation into this matter in order to allow the detective sufficient time for the alcohol to leave his system. If this was the case, the respondent not only helped to cover up the possible crime of another member of the service, but also caused the waste of valuable Department resources to search for the body of an officer whom he was aware had walked away from the accident. Regardless of the respondent's motives, his actions probably enabled a member of the service who was driving while intoxicated to escape detection. For these reasons, the Commission believed that this respondent should have been placed on dismissal probation.⁷¹

The fourth case involved a lieutenant who had been a member of the Department for 26 years. The respondent asked a subordinate female officer who was patrolling a subway station to come into a room used to watch for possible fare beaters. As the female officer observed riders through a peephole, the respondent requested that she turn around. When she did, she saw the respondent with his pants pulled down and his genitals exposed. The officer told the respondent that she was not interested and left. Over the next several months, the respondent sent this police officer nine text messages that contained pictures of male genitalia. The respondent also sent her nine text messages with "a sexual undertone." When the police officer requested that the respondent stop sending these messages, he did.

In his official Department interview, the respondent maintained that these messages were consensual, even though the police officer had rejected his request for a date and his request to have sex with her. The police officer claimed that the respondent's attention was unwanted. However, text messages from the police officer to the respondent appeared to support the respondent's contention that there was a level of consensual flirtation between the two.⁷² There were neither claims nor evidence that the police officer suffered any retaliation

⁷¹ The detective received charges, and the two responding officers received discipline at the command level.

⁷² It is unknown whether IAB ever questioned the complainant about the text messages that she sent. In her initial interview, she denied responding to any of the respondent's messages. An alternative explanation for the responses, which appeared flirtatious, could also be that the complainant was a subordinate trying to

for rejecting the respondent's advances.

The same respondent also sent images of a penis on two occasions to a civilian employee of the Department. According to this second complainant, the respondent told her that he sent the initial photograph accidentally. Then, two days later, he sent her the same photograph. When questioned in his official Department interview, the respondent stated that he might have propositioned the second complainant one time, but that this relationship, while flirty, was not the same as his relationship with the police officer. The respondent admitted the possibility that he accidentally sent a picture of a penis to the second complainant and then purposefully sent her another such picture.

In formulating an appropriate penalty, the Department noted that the respondent had one prior disciplinary matter from 24 years earlier. He had received high ratings on his annual performance evaluations and had been recognized on 16 occasions with awards for his service. The respondent was placed on dismissal probation, forfeited 45 vacation days, was suspended for 15 days, was directed to cooperate with Department counseling and training programs, and was transferred. The Department did not require that the respondent file for service retirement.

If the respondent's misconduct only had involved an arguably consensual, flirty relationship with a subordinate officer, the Commission would not have disagreed with the penalty. However, the respondent's misconduct went beyond that. It was disconcerting that the respondent was the police officer's direct supervisor and that he exposed himself while on duty. The fact that the respondent also sent pictures of male genitalia to another subordinate further aggravated the respondent's misconduct. This kind of behavior required a particularly strong response as it often goes unreported because of fear of retaliation. The Commission also noted that the police officer's partner perceived that the complainant received favorable treatment from the respondent. While this perception did not appear to be supported by any

appease her supervisor to avoid angering him and risk retaliation.

other evidence, it was troubling.⁷³ For all of these reasons, the Commission believed the respondent should have been separated from the Department.

The fifth case where the Commission believed a more significant penalty was warranted involved three sets of disciplinary charges against one subject officer. Although the charges arose separately, they were consolidated for disposition. The misconduct in all three cases related to the respondent's failure to maintain insurance on his personal vehicles. The first set of charges, filed in January 2009, arose following his involvement in an October 2007 car accident. Investigation revealed that the respondent was operating an uninsured vehicle at the time of that accident, that the vehicle had been uninsured for a period of almost two years at that time, and that the respondent had operated a second uninsured vehicle during 2007 and 2008. The first set of charges also alleged that the respondent impeded the investigation during his official Department interview by providing forged and/or altered insurance documents to investigators, indicating that one of the two vehicles at issue was insured. The second set of charges, filed in May 2009, alleged that for a period of more than a week in late 2008, the respondent had operated a vehicle while knowing or having reason to know that his license had been suspended for failing to maintain insurance on his personal vehicle. He also was charged with failing to notify the Department that his license had been suspended. The third set of charges, filed in February 2010, alleged that from February to June 2009 – *after* the first set of disciplinary charges had been filed – the respondent again operated an uninsured personal vehicle. In addition, the charges alleged that during May and June 2009, the respondent failed to maintain a valid license, drove with a suspended license, and failed to notify the Department that his license had been suspended.

Initially, the respondent maintained that his spouse had been responsible for paying the insurance premiums on his vehicles, and had allowed them to lapse without his knowledge.

⁷³ Although there appeared to be no evidence to corroborate the partner's perception, the perception alone is a sufficient cause for concern.

With respect to the forged insurance documents, he explained that his spouse had provided those documents to him. His spouse supported both claims.

The respondent, a detective, was a 17-year veteran who had no prior disciplinary history but had been placed on Level II discipline monitoring 2½ years prior to the adjudication of these cases.⁷⁴ The respondent pled guilty to all of the charges against him, and forfeited a total of 40 vacation days to cover the misconduct alleged in all 3 sets of charges. The assistant advocate explained that dismissal probation was not warranted because other cases that resulted in dismissal probation had involved more egregious conduct than the respondent's. While the Commission agreed that taken alone, any one set of charges might not have warranted dismissal probation, the pattern that continued over three years is troubling. In the first incident, according to the respondent, he learned of the lapses in insurance coverage in 2007, after he was involved in the motor vehicle accident. As part of that investigation, he presented fraudulent documents as proof that he was insured. Even if credence was given to the respondent's explanation that he was not aware that the documents he provided to investigators were fraudulent, the respondent failed to correct the situation and continued to allow his wife to handle the insurance payments for years. Accordingly, the respondent deserved a greater penalty that included dismissal probation. During the Commission's discussions with DAO, they stressed that this respondent had already received a more severe penalty than other officers who engaged in similar wrongdoing based on the continuing pattern of misconduct.

In the sixth case, the respondent rear-ended a vehicle. According to the complainant, the respondent offered to pay for the repairs to the complainant's car, but the complainant

⁷⁴ The Department has a central monitoring unit that receives regular reports on officers who are placed in one of its programs based on concerns about their behavior or performance. These monitoring programs range from Level I to Level III, with III being the most highly monitored. The programs are also categorized based on whether the officer's issues involve force-related misconduct, performance issues, or disciplinary issues. For further information about these monitoring programs and the Performance Monitoring Unit, see the Commission's report, "*The New York City Police Department's Non-IAB Proactive Integrity Programs*" (December 2001), and the Commission's report, "*A Follow-Up Review of the New York City Police Department's Performance Monitoring Unit*" (April 2006).

refused and opted to call the police. The respondent then fled the scene without providing any information concerning his identity or insurance carrier. According to the respondent, he and the complainant mutually agreed to forgo calling the police and go their separate ways. He denied offering to pay for the damage to the complainant's vehicle.

After the accident, the respondent asked his brother, also a member of the service, whether there had been a report filed against him. His brother discovered that a complaint had been filed against the respondent for leaving the scene of an accident.⁷⁵ The brother advised the respondent to file a form with the Department of Motor Vehicles and notify the desk sergeant. The respondent did as he was advised. The respondent told the desk sergeant that although both he and the complainant agreed to go their separate ways, he suspected the complainant was going to file a complaint anyway so he called his brother to determine if any such complaint had been filed.

The respondent was charged in one specification with leaving the scene of an accident where there was property damage without stopping to contact police or display his license and insurance identification information. He forfeited 20 vacation days. The respondent's request that his brother conduct an unauthorized inquiry on Department computers to check for a complaint supports the complainant's statement that he had told the respondent he wanted to obtain a police report. The respondent's claim that he had an unexplained suspicion a report might be filed was not credible. The Commission believed that a period of dismissal probation would have been appropriate in this matter as the respondent was aware that he had a duty to remain at the scene of the accident until a police report was taken.

The next respondent forfeited 45 vacation days to settle two cases. One set of charges arose from an integrity test arranged by IAB in which the respondent and his partner were assigned to a job that came over the radio. Although the respondent and his partner never responded to the mock assignment, they made memo book entries indicating otherwise, even

⁷⁵ The respondent's brother received discipline at the command level for computer misuse.

marking the job as “unfounded.”⁷⁶ When questioned in his official Department interview, the respondent said he could not recall the job but claimed that he always responded to all jobs to which he was assigned. The respondent was charged with failing to respond to the radio run and with making incorrect and improper entries in his Department issued memo book.

In the second case against this respondent, he appeared in traffic court with a civilian who was scheduled to have a hearing on three traffic summonses issued by another member of the service. The respondent approached that member of the service, displayed his badge, identified himself as a fellow member of the service, and asked if the other officer could “do something” for the civilian. When the other officer rebuffed this request, the respondent left the location.

In his official Department interview, the respondent admitted to going to the traffic court with his friend and approaching the other officer. He denied, however, asking if the other officer could do anything for his friend. He admitted that he identified himself as a member of the service but stated that was as far as he got because the other officer indicated he did not want to speak with him. The respondent explained that he approached the other officer to determine how the civilian behaved during the stop because he was considering giving the civilian a union card. The Commission believed that the respondent's explanation was designed to cover up his own misconduct. Moreover, in making this statement, the respondent deliberately called into question the veracity of another officer. DAO charged the respondent with misconduct based on asking whether the other officer could do anything for his friend, and offered the respondent the forfeiture of 30 vacation days to settle both sets of charges against him. The Police Commissioner increased the penalty to the forfeiture of 45 vacation days.

The respondent had been a member of the Department for a mere three years when

⁷⁶ The Commission had not yet reviewed the case against the respondent's partner at the time of the drafting of this report.

both of these incidents occurred. The Commission believed that due to the respondent's attempts to tamper with the other officer's testimony for the purpose of getting the summonses dismissed for a friend, as well as lying about that after the fact, a period of dismissal probation, at minimum, was warranted.

In this review, the Commission noted one case where it believed the discipline levied against the subject officer was unduly harsh.⁷⁷ In that case, the respondent, a sergeant, was an 11-year veteran. Two days prior to a previously requested day off, the respondent's commanding officer learned that the respondent would need to attend a CompStat⁷⁸ meeting on his day off. The commanding officer asked a lieutenant to notify the respondent. The lieutenant informed the commanding officer that the respondent had previously requested the day off and stated that he thought it had been approved. The lieutenant subsequently disapproved the day off due to the CompStat meeting. After receiving a voicemail from the commanding officer regarding his required attendance at the meeting, the respondent told the commanding officer that he could not attend the meeting because his wife was working and he had child care responsibilities. The subject officer stated that he had tried to find a babysitter, but had been unable to do so. The commanding officer ordered the subject officer to appear and said there would be consequences for a failure to do so. The subject officer failed to attend the CompStat meeting. He did appear at the following CompStat meeting, held two weeks later. The respondent was charged with failing to comply with an order, being absent without leave, and failing to keep his uniform in good condition.

The respondent had a mediocre performance history as measured by his evaluations,

⁷⁷ Although there were other cases where the Commission believed the forfeiture of fewer vacation days would have been sufficient, the Commission only comments on this case because the penalty seemed particularly severe and unjustified in light of the charged misconduct and the surrounding circumstances.

⁷⁸ CompStat is short for Computer Statistics or Comparative Statistics. It is a data-driven management tool utilized in the Department. During CompStat meetings, precinct commanders discuss the crime data and quality of life issues that are present in their commands, as well as their efforts to address these issues. Precinct and borough commanders are thoroughly questioned and, at times, held accountable for increases in crime in their commands.

his commanding officer's rating, and a chronic sick history. He had received one command discipline seven years earlier for failing to safeguard prisoner property.⁷⁹ The assistant advocate departed from precedent to decrease the penalty by five days because of the respondent's child care issues, his previous submission of a request for the day off, and a request for leniency submitted on his behalf by a lieutenant. The respondent was nonetheless penalized and forfeited 20 vacation days. The Commission acknowledged that the subject officer should have been penalized for failing to follow his commanding officer's order; however, in light of penalties imposed in other matters, the forfeiture of 20 vacation days seemed particularly severe.

B. Serious Off-Duty Misconduct

The Commission focused specifically on those cases where an officer was charged with committing off-duty misconduct in circumstances involving alcohol, the display or discharge of a firearm, or a domestic incident with a family member or other intimate associate.⁸⁰

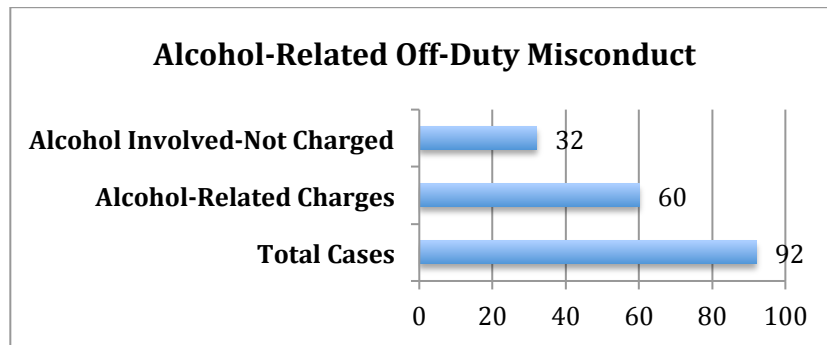
The Commission examined these cases to determine whether the penalties were appropriate given the misconduct and were sufficiently severe to deter future, similar misconduct, as well as to ensure that the Department followed its stated policies.

⁷⁹ Command disciplines are issued at the subject officer's command and are not prosecuted by DAO unless the subject officer chooses to contest the matter. Penalties for command disciplines range from a warning to the forfeiture of up to 10 vacation days. Only certain misconduct can be addressed through a command discipline.

⁸⁰ There was significant overlap of cases among these categories of misconduct. There was also overlap between these three categories and cases where officers were charged with making a false statement or engaging in other types of falsehoods. A total of eight cases overlapped three of these categories: two cases were included in the alcohol-related, firearm-related, and domestic incident categories; three cases were included in the alcohol-related, domestic incident, and false statement categories; one case was included in the alcohol-related, firearm-related, and false statement categories; and two cases involved the firearm-related, domestic incident, and false statement categories. A total of 38 cases overlapped 2 of these categories. Eighteen cases were included in both the alcohol-related and the domestic incident categories. Eight cases were counted in the alcohol-related and false statement categories. One case was included in both the alcohol-related and firearms-related categories. Two cases were included in both the firearm-related and domestic incident categories. Eight cases were included in both the domestic incident and false statement categories. One case was counted in both the firearms-related and false statement categories.

1. Alcohol-Related Off-Duty Misconduct

In its last Annual Report,⁸¹ the Commission reported on 61 disciplinary cases in which alcohol played some role. Thirty-six of those cases involved alcohol-related charges, while 25 did not. Eighteen of those cases included charges for driving while under the influence (DUI) and/or driving while ability impaired (DWAI).⁸² For this report, the Commission assessed 92 cases where alcohol use was implicated, and again differentiated between cases that resulted in alcohol-related charges and cases that did not.



In 60 of the 92 cases, an administrative charge alleged alcohol misuse. Thirty-six of those cases, *more than half*, involved charges of DUI and/or DWAI. In all but two of the DUI/DWAI cases, the subject officers received an additional charge of being unfit for duty.⁸³ Of the officers who were charged with DUI/DWAI, almost all refused to submit to a breathalyzer, field sobriety test, or blood test. Those who refused such testing received an additional charge based on this refusal.⁸⁴ Where the subject officer submitted to testing, an

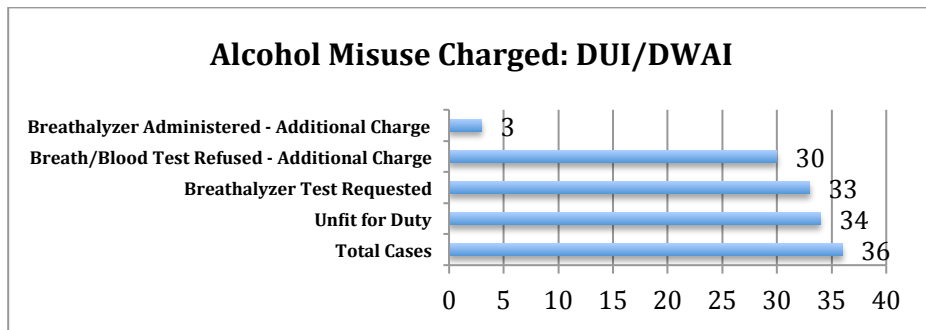
⁸¹ *Fourteenth Annual Report* (February 2012) at pp. 18-23.

⁸² In New York State, the relevant criminal offense is Driving While Intoxicated. This charge is analogous to the Department's administrative charge of driving under the influence. If there is not sufficient evidence to prove that the subject officer was driving under the influence, the officer may be found guilty of the lesser offense of driving while ability impaired. The Department usually includes both driving under the influence and driving while ability impaired in the administrative charges.

⁸³ Department regulations require an officer to be "fit for duty at all times, except when on sick report." NYPD Patrol Guide section 203-04, "Fitness For Duty." Officers are prohibited from consuming alcohol to the point where they become unfit for duty. In one of the cases where the subject officer was not charged with being unfit for duty, the Commission believed that the charge should have been levied because the subject officer was charged with driving with a blood alcohol content of .124%, and had been found unfit for duty by a patrol sergeant. In the second case, it was unclear when the incident was reported to the Department and whether a fitness-for-duty finding could have been made.

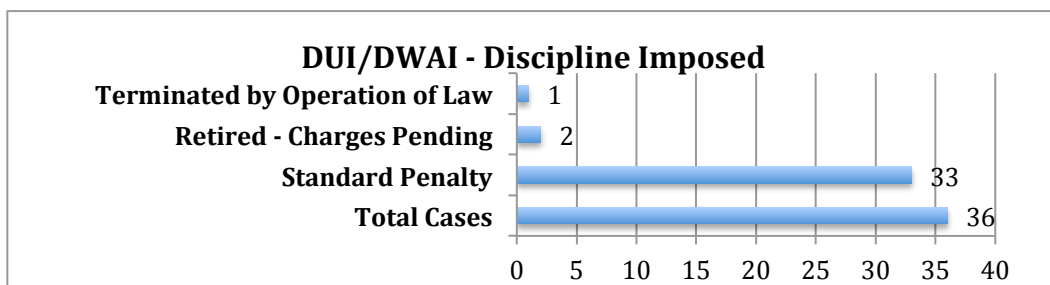
⁸⁴ In three of these "refusal" cases, the subject officer submitted to an initial portable breathalyzer test in the field, but refused a second test later, at the precinct or hospital. In two of the cases, the subject officer

additional DUI/DWAI charge was imposed based on his or her blood alcohol content.



In two cases, the physical condition of the subject officer precluded any breath or blood testing from being conducted.

For the most part, in cases involving DUI/DWAI allegations, the Department did not deviate from its standard penalty of dismissal probation, forfeiture of at least 30 vacation days or suspension for 30 days, periodic breath-testing,⁸⁵ and cooperation with counseling programs. In a small number of cases, no penalties were imposed due to the termination⁸⁶ or retirement of the subject officer. The Commission agreed with the penalties imposed in all of the cases where DUI or DWAI was involved.



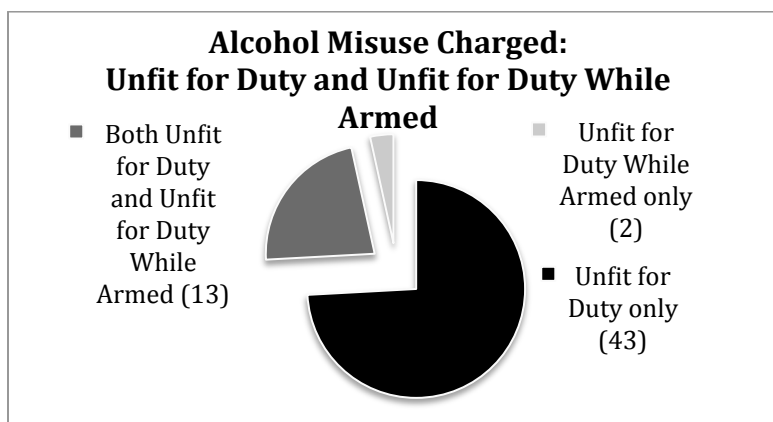
As reflected in the chart below, the Commission examined the 58 alcohol-related cases where the subject officers were charged with being unfit for duty to assess whether those

received charges based on the results of the portable breathalyzer test and the subsequent refusal, while in the third case, the respondent received charges based solely on the refusal. In one additional case where the officer was charged with refusing to submit to a breathalyzer test, the officer apparently submitted to some form of testing because the charges contained a specification for driving with a blood alcohol content of .21%.

⁸⁵ As a condition of plea agreements to settle DUI charges, subject officers must submit to random, quarterly breath-testing to demonstrate that they are abstaining from alcohol. An officer who tests above the prescribed level of 0.04% can be summarily terminated.

⁸⁶ The Commission notes that there was a criminal indictment pending against one of these officers who was terminated by operation of law prior to the adjudication of the disciplinary charges. The disciplinary charges were presumably pending while the criminal investigation ensued.

officers who were armed at the time of the incident were appropriately charged with being unfit for duty while armed. Of those 58 cases, 15 of the subject officers -- less than one-third -- were found to be unfit for duty and/or unfit for duty while in possession of a firearm. All but one of these officers were appropriately charged with being unfit for duty while armed,⁸⁷ and twelve of these received a more severe penalty than the Department's standard penalty for either a DUI/DWAI case or an unfit for duty case.⁸⁸ In the remaining three cases, charges were filed,⁸⁹ as one officer retired and two officers were terminated by operation of law.⁹⁰



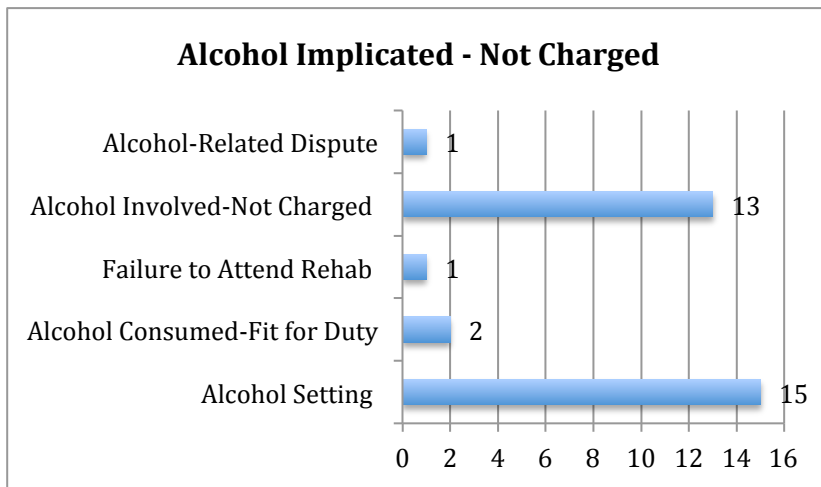
⁸⁷ In the case where the subject officer was armed but not charged with being unfit for duty while armed, he did receive a greater penalty than the standard dismissal probation in conjunction with 30 penalty days. However, there were also aggravating circumstances, including refusing to take a blood-alcohol test, failing to immediately identify himself as a member of the Department, and operating a Department rental vehicle while under the influence.

⁸⁸ The Commission considered a penalty of dismissal probation; approximately 30 vacation or suspension days; random, quarterly breath-testing; and cooperation with all Department counseling programs deemed appropriate as the standard penalty for those cases involving DUI or DWAI. In those cases where the behavior solely encompassed being unfit for duty, the Commission viewed as appropriate a standard penalty to be the forfeiture of approximately 30 vacation or suspension days, and the direction to cooperate with Department counseling programs.

⁸⁹ Charges are filed in these cases in the event the officer attempts to reinstate his employment. If that occurs, the statute of limitations for the alleged misconduct will not have expired, and the officer's alleged misconduct can still be addressed upon his return to the Department.

⁹⁰ Section 30(1)(e) of the Public Officers Law provides that a public officer automatically vacates his or her position if criminally convicted of a felony or a crime that involves a violation of the "oath of office."

A breakdown of the 32 cases where alcohol appeared to play some role in the incident but alcohol misuse was not charged appears in the table below. Based on the reported circumstances, the Commission agreed in all but one case with DAO's decision not to bring a charge of alcohol misuse. In that case, the Commission did not have the necessary paperwork to determine whether an alcohol-related charge would have been appropriate.⁹¹



“Alcohol-Related Dispute” refers to a case that involved a physical altercation and alcohol.

“Alcohol Involved – Not Charged” refers to cases with some evidence that the subject officer had been drinking prior to or during the alleged incident, but where a fitness-for-duty determination could not be made due to the length of time between the incident itself and notification to the Department.

“Alcohol Setting” refers to incidents that occurred in a setting where alcohol was served or where alcohol misuse by another participant may have contributed to the course of events.

The Commission next examined the discipline levied in all of the 92 alcohol-related cases. The Commission disagreed with the penalty imposed in only one case. In that case, no alcohol-related misconduct was charged. That case is discussed in the firearm-related section of this report.⁹²

The Commission concluded, as it has in its past several Annual Reports,⁹³ that the Department continues to follow its policies regarding the treatment of alcohol-related allegations. Due to the Department's consistent adherence to its policies in these cases, the

⁹¹ The subject officer opted for an administrative trial, and the Commission did not have the Department paperwork that would contain the fitness-for-duty finding. Therefore, the Commission was unable to determine whether the officer was found fit for duty, or whether Department personnel failed to assess the officer's fitness for duty in the first instance. Because this officer was not charged with any alcohol-related misconduct, it is unlikely that any evidence regarding his fitness for duty was presented at trial.

⁹² See *infra* at pp. 48-49.

⁹³ See *Tenth Annual Report of the Commission (Tenth Annual Report)* (February 2008) at pp. 19-23; *Eleventh Annual Report* (February 2009) at pp. 19-26; *Twelfth Annual Report* (February 2010) at pp. 20-30; *Thirteenth Annual Report* (March 2011) at pp. 10-12; and *Fourteenth Annual Report* (February 2012) at pp. 18-23.

Commission intends to discontinue designating a specific section to discuss these types of cases in its Annual Reports. Because this is such an important area of misconduct, the Commission will continue to internally monitor these cases. If the Commission finds indications that the Department is failing to adequately charge or impose sufficient penalties in these cases, we will again devote a section of the Annual Report to our analysis.

2. Firearm-Related Off-Duty Misconduct

For its last Annual Report,⁹⁴ the Commission reviewed 19 cases that involved the unjustified display or discharge of a firearm: 11 involved a display, while 8 involved a discharge. For the *Thirteenth Annual Report*, the Commission reviewed 13 cases that involved the display or discharge of a firearm.⁹⁵ The Commission agreed with the penalties imposed in all of those cases it reviewed for the *Fourteenth Annual Report* and all but one of those cases it reviewed for the *Thirteenth Annual Report*. In both reports, the Commission commented approvingly on the Department's increased use of dismissal probation in conjunction with the forfeiture of vacation or suspension days.⁹⁶

In this reporting period, the Commission reviewed 13 cases that involved off-duty firearm-related misconduct committed by a uniformed member of the service. Eleven of the firearm cases involved the display of a firearm; two involved the discharge of a firearm.⁹⁷ The Commission examined these cases to determine whether the Department made the required fitness-for-duty findings, levied charges of unfit for duty while armed when appropriate, and imposed penalties designed to deter future misconduct.

⁹⁴ *Fourteenth Annual Report* (February 2012) at pp. 23-25.

⁹⁵ *Thirteenth Annual Report* (March 2011) at pp. 12-14.

⁹⁶ *Fourteenth Annual Report* (February 2012) at p. 23. See also *Thirteenth Annual Report* (March 2011) at pp. 12-14.

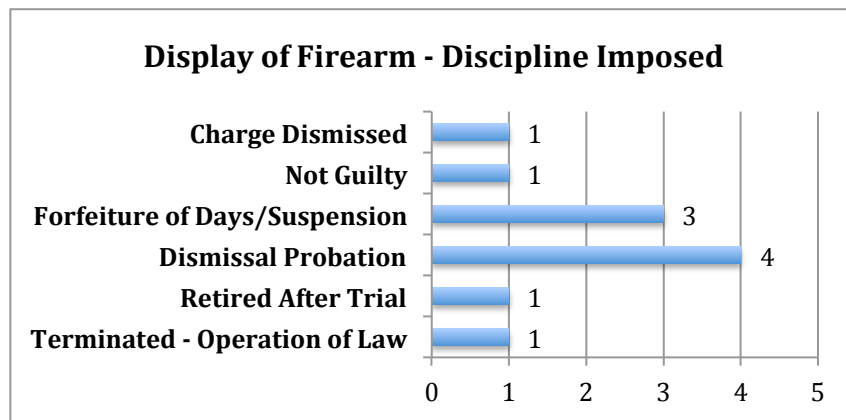
⁹⁷ In the two cases that involved the discharge of a firearm, both officers were separated from the Department prior to the adjudication of the charges alleging the improper discharge. One resigned, and the other was summarily terminated as he was on dismissal probation when the incident occurred.

a. Fitness-for-Duty Findings

Of the 13 cases reviewed, the Commission found that in 4 cases, the Department paperwork contained a fitness-for-duty determination, and all 4 of these officers were appropriately charged based on those findings. In four of the remaining nine cases, the subject officer was not identified or the incident was not reported until a significant time had passed, rendering it impossible to make a fitness-for-duty finding. In two cases, because of the path each case took, either through trial or the subject officer’s resignation or retirement, the Commission did not receive the paperwork that would normally contain the fitness-for-duty finding. Of the remaining three cases, it was not clear from the paperwork whether such a finding was, in fact, made.

b. Penalties

A break down of the discipline imposed in the firearm display cases appears in the chart below:



“Charge Dismissed”: While the display charge was dismissed, other charges remained against the subject officer and he was ultimately placed on dismissal probation, required to forfeit 30 days served on pre-trial suspension, and required to forfeit an additional 15 vacation days.

“Not Guilty”: This officer forfeited 30 pre-trial suspension days after being found guilty of other charges.

“Forfeiture of Vacation/Suspension Days Only”: These officers forfeited between 10 and 40 vacation days or served suspension days in these cases.

“Retired After Trial”: One officer was allowed to retire after being found guilty after a trial when the Trial Commissioner recommended that he be terminated.

“Terminated – Operation of Law”: This officer was terminated after he was convicted of a felony in a criminal proceeding.

With respect to the penalties imposed in the display cases, the Commission agreed with the outcomes in 9 out of the 11 cases. While the Commission has historically advocated that a period of dismissal probation be imposed when an officer is found guilty of the wrongful display of a firearm,⁹⁸ the Commission agreed with the penalty in two cases where the subject officer only forfeited vacation days.

i. Commission Agreed Although Penalty Did Not Include Dismissal Probation

In the first case, a search warrant was executed at the home of a civilian who was the target of a robbery/homicide investigation. During the execution of the warrant, officers found photographs on the civilian's computer of a visibly younger respondent, together with the civilian, in various poses with firearms. When questioned, the respondent admitted that he was the person in the photographs, but stated that he had not had contact with the civilian in at least 15 years. There was no evidence that the respondent had more contact, or was aware of the civilian's criminal background. Given that the respondent had not raised his firearm in anger to intimidate the civilian, and that the photographs had been taken many years before, the Commission agreed with the penalty of forfeiture of 10 vacation days.

In the second case, the subject officer's brother-in-law accused him of displaying his firearm during an argument. The brother-in-law stated that the subject officer did not point the firearm at anyone. The subject officer and his wife (the complainant's sister who was also present and participated in the argument with the subject officer) denied that the subject officer intentionally displayed his firearm. During the course of the investigation, the brother-in-law left the country and was unavailable as a prosecution witness. Due to the evidentiary issues with this case, the Commission agreed with the negotiated result of 25 vacation days forfeited.

⁹⁸ See *Tenth Annual Report* (February 2008) at pp. 26-27; *Eleventh Annual Report* (February 2009) at pp. 26 and 29; and *Twelfth Annual Report* (February 2010) at pp. 31 and 33-34.

ii. Commission Disagreed with Imposed Penalty

The Commission did not agree with the outcomes in 2 of the 11 cases involving the off-duty, unjustified display of a firearm. In the first of these cases, the Commission disagreed with the penalty even though a period of dismissal probation was imposed. In that case, the subject officer had been a member of the service for only two-and-a-half years at the time of the alleged misconduct. The mother of the subject officer's child was returning home after attending a nightclub with friends. After she exited her friend's car to go into her residence, the respondent was observed pointing a firearm at her head, grabbing her hair, and leading her up the stairs to the building while she screamed. The complainant's friends and an anonymous witness called 911. The respondent was arrested.

The respondent's girlfriend did not cooperate with the criminal prosecution, resulting in the dismissal of the criminal matter. During the administrative trial, one of the complainant's friends testified and DAO introduced the hearsay statement of another of the complainant's friends made to investigators. The anonymous 911 call, in which the caller reported seeing someone downstairs with a gun fighting with a woman, was also offered in evidence. The respondent testified and denied any culpability. He stated that he was merely trying to leave the scene and to move the complainant out of the way to avoid a confrontation. He testified that in the course of moving her, his hand might have been placed around her throat and he might have pulled her hair.

Three months after this incident -- while the first set of charges was pending -- the respondent failed to remain alert while on duty, and new charges were filed against him. DAO requested that this officer be terminated. The Trial Commissioner, relying on precedent, recommended that the respondent be placed on dismissal probation and forfeit the combined 62 days he served on pre-trial suspension for both incidents. The Police Commissioner accepted this recommendation.

The Commission disagreed with the penalty. The respondent was barely tenured when

the incident with the firearm occurred.⁹⁹ He did not merely display the firearm, but pointed it, at close range, at his girlfriend's head after waiting for her outside of her building. This demonstrated not just a lack of judgment but also a lack of maturity and impulse-control necessary for a member of the service. This misconduct was further compounded by the respondent's unwillingness to admit that he displayed his firearm and by his incredible testimony that he was merely trying to leave the scene. Additionally, less than three months later, new allegations were made against the respondent because he failed to remain alert while on assignment. He had two sets of charges and was placed on Level II monitoring before his third anniversary with the Department. For those reasons, the Commission agreed with the penalty recommended by DAO.

In the second case where the Commission disagreed with the penalty imposed, the respondent, a seven-year veteran with no prior disciplinary history, pointed a firearm at his own head and threatened to hurt himself when the complainant, his married girlfriend, tried to end the relationship. The display of the firearm occurred during the couple's relationship, which lasted over a year-and-a-half. Neither party could remember the date when this occurred, and there was no evidence regarding whether the firearm was loaded at the time of the display. After the relationship ended, the respondent continued sending messages to the complainant, her husband, her friends, and her co-workers. The respondent sent approximately 70 messages in a one-month time period. In these messages to the complainant's family and friends, the respondent revealed their relationship. The respondent also surreptitiously recorded the complainant and himself during a sexual encounter and took nude photographs of the complainant without her permission. In his messages to the complainant, he threatened to send the recording and the nude photographs to her husband, friends, and co-workers. According to the complainant, the respondent created two fictitious accounts on a popular social networking website and used these accounts to send

⁹⁹ All members of the service are placed on probation for the first two years following their appointment to the Department. During this time, they can be summarily terminated, without a hearing, for any reason except one that is constitutionally impermissible.

messages to everyone on her friend list and on her husband's friend list, and to post “explicit” images of the complainant. The complainant repeatedly requested that the respondent stop sending her messages. She obtained an order of protection against the respondent, which contained a provision prohibiting the respondent from possessing any firearms.

DAO recommended the forfeiture of 40 vacation days as a penalty. In the assessment of the case, the assistant advocate noted that the display of the firearm occurred on only one occasion, and that because alcohol was not involved, the case was distinguishable from a prior, similar case where dismissal probation was imposed. The assistant advocate also noted that the respondent had been compliant with Department counseling services. Both the First Deputy Commissioner and Trial Commissioner had given unfavorable recommendations to DAO’s recommended penalty. The Police Commissioner directed the renegotiation of the penalty to include 15 suspension days combined with the forfeiture of 25 vacation days, and the respondent’s continued cooperation with counseling.¹⁰⁰ The Commission believed that a further step should have been taken and the respondent should have been placed on a period of dismissal probation. The totality of the circumstances of this case pointed to an emotionally unstable person who might not be suited for police work. A period of dismissal probation would have allowed the Department to terminate the respondent summarily if he demonstrated further emotional issues.

c. Conclusion

In conclusion, the Commission agreed with the imposed penalties in all but two cases that involved the wrongful display of a firearm. The Commission commends the Department’s increased inclusion of dismissal probation as a penalty in cases that involve the unwarranted display of a firearm, and will continue to monitor and report on the penalties levied in cases where firearm-related misconduct is involved.

¹⁰⁰ This penalty, which was also the penalty recommended by the First Deputy Commissioner, also covered an additional, unrelated specification that alleged that the respondent failed to voucher personal property belonging to a prisoner and instead, disposed of it in the garbage.

3. Domestic Incidents

Last year, the Commission reviewed 84 cases in which the officer's alleged involvement in a domestic incident led to charges being levied against the officer based either on the domestic incident or some other misconduct discovered during the ensuing investigation.¹⁰¹ In that report, the Commission found that the Department diligently prosecuted and penalized officers who were involved in domestic incidents even when the complainant was not cooperative. The Commission disagreed with the penalties imposed in two cases; however, this disagreement was not based on the facts of the domestic incident, but rather on aggravating misconduct.¹⁰²

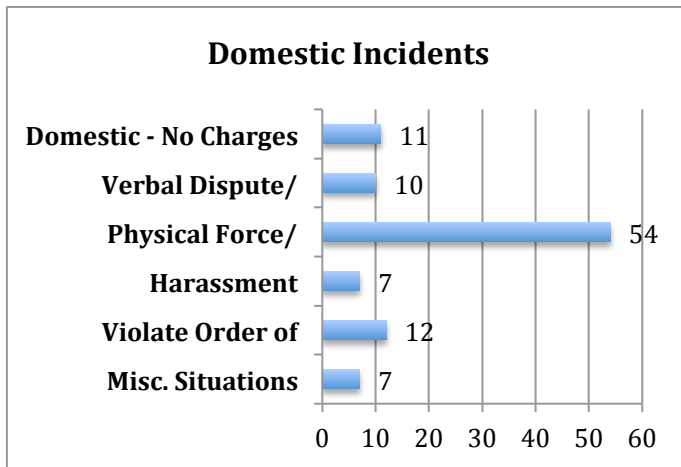
For this report, Commission staff reviewed the penalties imposed in 101 cases where the subject officer was involved in a domestic incident.¹⁰³ The Department considers an incident domestic in nature if it occurs with the subject officer's spouse, domestic partner, child(ren), other family member(s), or a person whom the subject officer was dating or had dated in the past. The Department includes within this category of misconduct: violations of court orders of protection, verbal arguments, stalking, physical altercations, damage to property, sexual assaults, and harassment.

¹⁰¹ *Fourteenth Annual Report* (February 2012) at pp. 25-30.

¹⁰² *Id.* at pp. 27-30.

¹⁰³ Five subject officers were responsible for two cases each, two subject officers were responsible for three cases each, and two subject officers were responsible for four cases each.

The following chart illustrates the breakdown of the domestic charges reviewed for this report:¹⁰⁴

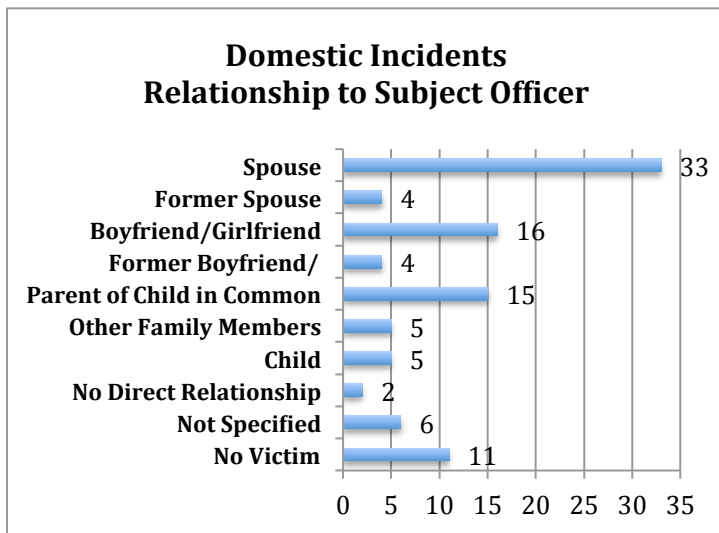


“Domestic – No Charges” refers to cases where other misconduct was discovered during the investigation into domestic allegations that were ultimately not substantiated or where the subject officer was a victim.

“Physical Force/Altercations” refers to cases ranging from shoving, repeatedly striking, scratching, throwing objects at another person, and hiring another person to commit a murder.

“Miscellaneous Situations” refers to cases that involved smearing toothpaste into the complainant's clothing, causing damage to the complainant's property, preventing the complainant from leaving during a verbal dispute, throwing objects in the complainant's direction, and making false 911 calls about the complainant.

The following chart reflects the relationship between the subject officer and the complainant in the cases reviewed:



“Spouse” included cases where the subject officer and the officer’s spouse were estranged but not legally separated or divorced. Three of these cases involved the same officer and his wife, while two sets of two cases involved the same subject officers and their respective wives.

“Former Spouse” included one former domestic partner.

“Parent of Child in Common” included four cases involving the same subject officer and the mother of his child.

“Child” included two cases where the complainant was the same child and the incident alleged was the same. The respondents were the father and step-mother of the child. This category included adult and minor children, as well as step-children.

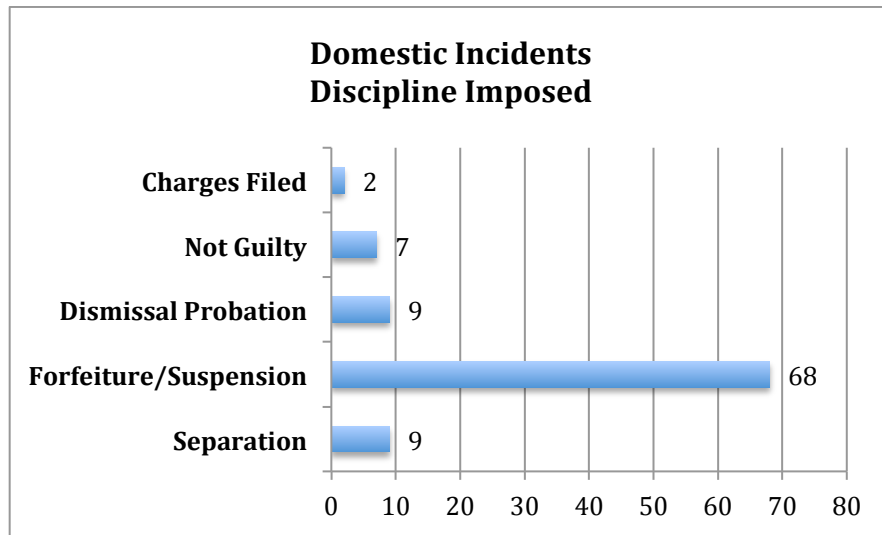
“Not Specified” included six cases, three of which involved the same respondent, where the Commission could not discern the nature of the relationship between the complainant and the subject officer.

“No Victim” included cases where the subject officer’s misconduct -- usually the failure to notify the Department of an unusual incident -- was uncovered during the course of the investigation into domestic allegations. Other charges that fell into this category included being absent from residence while on sick report without Department permission, computer misuse, failure to safeguard a firearm, and failure to renew the officer’s application for off-duty employment.

¹⁰⁴ Charges that could fit into more than one category were only included in the most serious category. For example, if a case involved a physical dispute and a verbal dispute, it would be classified as physical force/altercation only.

The Commission evaluated the penalties in these cases to determine their adequacy. The Commission took into consideration whether the complainant sustained any physical injuries; the nature of those injuries; the strength of the evidence against the subject officer, including whether the complainant was cooperative; which party was the primary aggressor; and whether the subject officer had any prior, formal allegations involving domestic issues.¹⁰⁵

A breakdown of the dispositions in the 101 cases evaluated appears below:



The chart reflects dispositions by officer, not by case. Several officers received discipline for multiple cases.

“Charges Filed” included cases where the subject officer was separated from the Department prior to the adjudication of the disciplinary matter.

“Not Guilty” included those cases where the domestic charges were dismissed prior to adjudication or after a trial. Two of those cases involved the same subject officer who was found guilty of domestic allegations in accompanying charges. In one case, the subject officer was found guilty of a second set of charges.

“Dismissal Probation” did not include those cases where retirement was part of the negotiated agreement and the officer was placed on dismissal probation until his retirement became effective. In the nine cases, the officers also forfeited between 30 and 62 vacation and/or suspension days.

“Forfeiture/Suspension” ranged from 10 to 50 days.

“Separation” included officers who were separated through termination or retirement, or by operation of law. One of the officers had two cases included in this section and two domestic cases where he was found not guilty, one of the officers had three cases, and one of the officers had four cases.

¹⁰⁵ The Commission considered an allegation to be formal if it had been previously reported to a law enforcement agency or had led to a complaint being filed in a criminal or family court. Allegations characterized as informal were those that the complainant mentioned for the first time during the investigation into the current allegations.

The Commission disagreed with the penalties imposed in six cases. The first three cases are discussed in other sections of this report.¹⁰⁶ The fourth case contained charges regarding a domestic incident and the making of misleading statements during two official Department interviews. In that case, the subject officer, a 19-year veteran, forfeited 35 vacation days after pleading guilty to his actions during and after a physical altercation with his spouse.¹⁰⁷ According to his wife, during the dispute, the subject officer grabbed her by her arms and pulled them behind her back. He pushed her onto their bed, causing her to hit her head on the headboard. As a result, the complainant sustained a bruise to her forehead but ultimately declined medical attention. She called 911 and, unbeknownst to her, the subject officer left the apartment. The complainant then left the apartment to go to a safer location. The subject officer observed her leave, and he returned to the residence. When police arrived, the subject officer refused to answer the door for two hours, and the Emergency Services Unit had to be called in order to gain entry. While the subject officer was locked inside of the apartment, he sent several text messages to the complainant asking her to call 911 to state that a police response was not necessary, and to send away the police who had already responded to their apartment.

In his official Department interview, the subject officer stated that his wife hit her head when they both fell on the bed after he tried to exit the room. He claimed that during his attempt to leave, he was forced to push his wife out of his way, and this resulted in a physical struggle between the two. When questioned about the two hours during which he failed to open the door to the responding officers and failed to answer his telephone, he claimed that he fell asleep in a back room. The subject officer further claimed that he did not hear any knocking on his door, nor did he hear either his home or cellular telephone ring. Later in the

¹⁰⁶ In one case, the Commission disagreed with the penalty because one of the specifications involved a false statement. This case is discussed in the false statement section of this report. *See infra* at pp. 70-71. Two of these cases were previously discussed in the firearms section of this report. *See supra* at pp. 48-50.

¹⁰⁷ He was also ordered to cooperate with all Department counseling programs deemed appropriate.

interview, the subject officer admitted that he heard a police radio outside of his door “at some point” but did not exit the apartment because he was on the telephone with his union delegate.

Although the complainant ultimately refused to cooperate with the administrative prosecution of the respondent, there was sufficient evidence of other misconduct for DAO to prosecute if the subject officer opted for a trial. The subject officer had a remote prior disciplinary history for failing to safeguard his firearm, and had been disciplined at the command level for failing to safeguard his Department identification. He received above-average ratings on his most recent performance evaluations and received Department recognition for his performance. Previously, he had been designated as chronic sick and been rated a 5 out of 10 by his commanding officer.

This case warranted a more severe penalty than the 35 vacation days forfeited. The subject officer’s account at his official Department interview was unlikely given the text messages that he sent to the complainant.¹⁰⁸ The subject officer's refusal to answer the door to responding officers for two hours prompted the Emergency Services Unit to respond.¹⁰⁹ Here, as in other cases commented on by the Commission,¹¹⁰ the respondent's conduct caused the unnecessary expenditure of city resources with the possibility that they would have been diverted from attending to a real emergency. This misconduct, coupled with his pleas to his wife to send away the responding police officers, merited a period of dismissal probation.

In the fifth case, the subject officer forfeited 30 vacation days and was transferred after pleading guilty to six charges. One of the charges alleged that she failed to notify the

¹⁰⁸ DAO explained that as they were unable to prove that the subject officer heard officers knocking on his door or heard either his cellular or home telephone ringing, they were unable to charge him with making a false statement in his official Department interview. They added that his telephone records supported his version that after hearing Department radios outside of his apartment, he called his union delegate.

¹⁰⁹ The Emergency Services Unit is an elite branch of the Department’s Special Operations Division. This unit responds to high-risk and emergency situations that are outside of the normal scope of the patrol and criminal investigation units.

¹¹⁰ See *supra* at pp. 31-33. See also *Fourteenth Annual Report* (February 2012) at pp. 16-17.

Department of her involvement in a physical altercation with her boyfriend. As with the prior cases discussed in this section, aggravating circumstances warranted a more severe penalty.

This officer's boyfriend had previously been arrested for domestic incidents and a sexual crime. He had also been arrested during his relationship with the subject officer for assaulting his landlord. After this assault, the subject officer contacted the landlord and warned him that filing a false report was a crime and that he could be arrested and imprisoned for doing so.¹¹¹ The subject officer was aware of her boyfriend's most recent arrest, yet she continued to associate with him, which led to a charge of criminal association. Additionally, the subject officer made 12 computer queries in Department databases on her boyfriend and on the mother of his child. The subject officer then passed on the information that she gained from these queries to her boyfriend and his child's mother. Finally, during her first official Department interview, the subject officer was ordered to stay away from her boyfriend. Two months later, in disobedience of that order, she was observed in his company for three hours by Department investigators.¹¹²

The Commission believed that the additional misconduct of computer misuse, divulging confidential information to a civilian with a criminal history, and disobeying an order justified a period of dismissal probation. In its past analysis of similar cases, the Commission has recommended termination of a subject officer for divulging confidential Department information to civilians.¹¹³ The Commission has also recommended dismissal probation for a member of the service who continued to associate with a girlfriend who had a criminal history, in defiance of a direct order by IAB.¹¹⁴ The subject officer in the instant case did not have a past disciplinary history and did not jeopardize anyone's safety with her

¹¹¹ The subject officer was not charged with trying to improperly influence the landlord in this manner.

¹¹² When questioned during a subsequent interview, the subject officer stated that after the first Department interview, she learned that she was pregnant with her boyfriend's child. She later suffered a miscarriage. She explained that the only reason she contacted her boyfriend on the date of the observation was to tell him about the pregnancy and miscarriage. This explanation did not appear to be verified.

¹¹³ See *Fourteenth Annual Report* (February 2012) at pp. 13-15, in which two such cases are discussed.

¹¹⁴ *Id.* at pp. 28-29. See also *supra* at pp. 30-31.

disclosures. Therefore, the Commission believed that she should have been given the opportunity to conform her behavior to Department standards. A period of dismissal probation in the instant case would have allowed the Department to terminate the subject officer summarily if she continued to associate with her boyfriend, as opposed to having to draft new charges and initiate the disciplinary process all over again.

In the next case, the Commission disagreed with the penalty because of the officer's prior disciplinary history. Police were called to the respondent's residence because he had engaged in a verbal argument with his adult son, also a member of the service.¹¹⁵ Another member of the household called the respondent's daughter, who then called 911. When police arrived, neither the respondent nor his son immediately identified himself as a member of the service, as required. Instead, after noticing a bullet-resistant vest, a duty gun belt, and an NYPD cap, the responding sergeant questioned whether anyone at the residence was a member of the service. It was only after this inquiry that the respondent and his son identified themselves.¹¹⁶ The respondent was charged with failing to provide the requisite notification of his status as a member of the service and with improperly engaging in a dispute with another off-duty officer, which required a police response.

For this misconduct, the respondent forfeited 20 vacation days. The Commission would not have taken issue with this penalty if the respondent did not have an extensive and serious disciplinary history. The respondent was a 24-year veteran with mixed performance ratings. Thirteen years prior to this incident, he had been placed on dismissal probation and suspended for 92 days for using excessive force, impeding an investigation, and making false statements. Shortly after this domestic incident with his son, the respondent was penalized for using a Department vehicle without permission to visit his residence while on duty, engaging in a domestic dispute with his estranged wife while on duty, and engaging in a second off-duty

¹¹⁵ There was conflicting information about whether the verbal dispute became physical.

¹¹⁶ The son forfeited 30 vacation days but had additional charges for failing to safeguard his firearms.

dispute with his estranged wife while holding his firearm. He also failed to report to the Department a threat made by his wife.

It is unclear what type of penalty the respondent received for the subsequent incidents with his estranged wife. According to the documents the Commission reviewed this year in connection with the altercation with his son, the respondent was placed on dismissal probation and forfeited 30 vacation days for the prior incidents. However, the documents the Commission reviewed last year in connection with the case involving the estranged wife indicated that the respondent forfeited only 26 vacation days.¹¹⁷ The assistant advocate specifically noted that one reason the respondent was not placed on dismissal probation following the incidents with his wife was that the respondent had indicated that he intended to retire.

In justifying the forfeiture of only 20 vacation days for the domestic incident with his son, the assistant advocate acknowledged that the respondent's behavior was troubling, but based on recent performance evaluations and the somewhat minor misconduct charged, the respondent had already been restored to full duty. The assistant advocate also stated that the respondent intended to apply immediately for service retirement upon the resolution of this case. Given that the respondent had previously indicated an intent to retire and had not done so,¹¹⁸ the Commission believed that the respondent's application for retirement should have been made an explicit part of the plea agreement. In response to a draft of this report, DAO indicated that they did not wish to establish precedent for this type of relatively minor misconduct to include separation from the Department. That precedent would then have to be followed in similar subsequent cases where the officer did not immediately identify himself as a member of the service.

In conclusion, the Commission found that in the cases that involved only domestic

¹¹⁷ *Fourteenth Annual Report* (February 2012) at pp. 41-42.

¹¹⁸ The Commission is cognizant that the respondent's application for retirement could have been delayed due to the necessity to resolve the instant case. If that was the reason the respondent did not retire, every effort should have been made to expedite the adjudication of the instant matter.

allegations, the Department adequately penalized the subject officers and required that they undergo Department counseling. In the six cases where the Commission disagreed with the penalties, other charges or aggravating factors were present. Because in recent years the Commission has similarly agreed with the Department's penalties in this area,¹¹⁹ the Commission intends to discontinue its specific focus on this category of cases in future Annual Reports. The Commission will continue to monitor this category of cases internally and will resume reporting on them if it observes an issue with the penalties being given.

C. False Statement Cases

Since its inception, the Commission has emphasized the importance of appropriately charging officers with making false statements and adequately disciplining these officers.

The Commission's initial examination of this topic contributed to the Department's adoption of its false statement policy in 1996. This policy provided that termination was the appropriate penalty for false official statements unless the Police Commissioner found exceptional circumstances justifying a less severe form of discipline. In 2005, the Department modified the policy to mandate termination only in those cases that involved an intentional false official statement regarding a material matter. The Department also excluded those false statements that could be characterized as mere denials of misconduct without the fabrication of events.

The Department's false statement policy only addresses false statements made in an "official setting," e.g., a P.G. hearing,¹²⁰ a CCRB interview, or under oath. This section of the Commission's report also includes false statements that were made under less formal circumstances, such as false entries in Department records, false statements made to other law enforcement agencies, and fraud. The Commission believes that both types of fabrications

¹¹⁹ See *Tenth Annual Report* (February 2008) at pp. 27-31; *Eleventh Annual Report* (February 2009) at pp. 31-35; *Twelfth Annual Report* (February 2010) at pp. 35-46; *Thirteenth Annual Report* (March 2011) at pp. 14-17; and *Fourteenth Annual Report* (February 2012) at pp. 25-30.

¹²⁰ See *supra* at p. 8, fn. 26 for a definition of P.G. hearings.

negatively impact the officer's and Department's integrity. Mere denials of misconduct in both official and non-testimonial scenarios were not included in the Commission's review.

In its last report, the Commission initially reviewed 157 cases involving a falsehood. After excluding those cases that the Commission believed involved a mere denial or a time and leave issue, the Commission only reported on 134 cases.¹²¹

For this report, the Commission initially reviewed 192 cases in which it appeared that the subject officer had made some type of a false statement. The Commission then excluded from its analysis 32 of the 192 cases because they seemed to constitute mere denials of wrongdoing, and therefore, did not fall within the ambit of the Department's definition of a false statement warranting termination.¹²²

The Commission did not believe that a mere denial should excuse the individual officer from the application of the false statement policy and the penalty of termination. Mere denials, in the context of a P.G. hearing or an official interview with CCRB should, in the Commission's opinion, result in a penalty of termination, unless adequate exceptional circumstances are specified. However, for this report, the Commission only determined whether the Department was imposing discipline consistent with its own policy, and therefore, the Commission chose to comment on only those official false statement cases that fall within the Department's current policy. The Commission also excluded three cases because the falsehoods involved time and leave issues that did not indicate a pattern. The Commission considered this type of falsehood a personnel issue, which does not involve the same credibility issues as other false statements. However, the Commission included in its analysis those cases that involved a time or leave issue when there was a forgery or an alteration of written documents charged.

¹²¹ *Fourteenth Annual Report* (February 2012) at pp. 30-45.

¹²² In some cases it was unclear if the statement at issue constituted a mere denial of guilt without embellishment, as the Commission did not have access to the entire statement. In these situations, the Commission counted these statements as "mere denials."

1. Charges Involving Official False Statements

There were 25 cases in which the respondents made an official false statement subject to the Department's false statement policy. The break down of these cases and their dispositions is illustrated below:

Context of False Statement	Total Number of Cases	Guilty and Separated ¹²³ from the Department	Filed ¹²⁴	Guilty and Not Separated from the Department	Not Guilty or Charges Dismissed Prior to Trial
P.G. Hearing	13	4	0	5	4
Court Testimony	3	1	1 ¹²⁵	1	0
Deposition	1	0	0	0	1
Court Documents ¹²⁶	8	0	5 ¹²⁷	2	1
CCRB Interviews	0	0	0	0	0

The Commission disagreed with the penalties in five of these cases. In the first two cases, the subject officers received false statement charges in connection with an investigation conducted after they failed the same integrity test. In that test, officers responded to a 911 call regarding an incident inside a laundromat. When the first responding officers arrived at the laundromat, an undercover officer portraying a civilian met them. The undercover officer informed them that a man came into the laundromat after being chased by police, placed a bag inside a washing machine, and left. The responding officers called for additional officers. When those officers arrived, the bag was opened and its contents were examined. They consisted of various articles of clothing, most of which had store tags attached, and a toy gun that was still in its packaging. The officers passed the property around among themselves. Some of the officers tried on hats that were in the bag. When they left the location, each

¹²³ For purposes of this analysis, the Commission did not differentiate among cases where the officer separated from the Department through retirement, resignation, or termination.

¹²⁴ See *supra* at p. 43, fn. 89.

¹²⁵ This officer was terminated by operation of law after being criminally convicted of a felony.

¹²⁶ This category included sworn supporting depositions, criminal court complaints, summonses, and affidavits.

¹²⁷ Four of these officers were terminated by operation of law after being criminally convicted of a felony, and one officer resigned prior to the adjudication of the charges against him.

officer except a sergeant left with at least one of the items from the bag. The entire incident was captured on video and audio. No property was vouchered until a week later. In the intervening time, one of the officers learned through a leak that this had been an integrity test, and he contacted at least one other officer to return the property that she had taken home with her. When the property was vouchered, the store tags were removed and the toy gun was no longer in its original packaging.

In their official Department interviews, two of the officers involved in the incident falsely stated that their team had left the location with all of the property. They denied knowledge that any other members of the service had removed any property from the location. They also stated that they each believed the other would voucher the property. They could not explain why the toy gun had been removed from its packaging or why the store tags had been removed from the items of clothing. One of the subject officers also stated that when he finally vouchered the property, he retrieved all of the property from a locker in his Command. In fact, other officers had admitted to taking some of the property home, so this was not possible. Both subject officers made statements that contradicted each other and contradicted what was observed on the video. They were charged with making a false statement in their official Department interviews.¹²⁸ The officers pled guilty to all of the charges against them and were placed on dismissal probation. They also forfeited 30 vacation days, and were suspended for 30 days.¹²⁹ One of these officers had received a command discipline a year prior to this incident for failing to voucher narcotics as part of another integrity test.

¹²⁸ They were also charged with failing to take proper police action by failing to voucher property and prepare the accompanying paperwork, failing to notify IAB of the official misconduct committed by other officers, failing to safeguard property, failing to conduct a proper investigation, failing to prepare proper memo book entries, and impeding an official Department investigation by providing misleading statements in their official Department interviews.

¹²⁹ The sergeant forfeited 45 penalty days and was placed on dismissal probation for his role in this incident. The officer who possibly informed all of the participants that this had been an integrity test was terminated, although he also was found guilty of soliciting a bribe in another, unrelated incident.

Although the penalty levied here was significant, there did not appear to be any exceptional circumstances to justify a downward departure from the penalty of termination. It seems clear that these officers had no intention of vouchering the property,¹³⁰ and only did so after learning that the incident was actually an integrity test. Any conclusion that this behavior was *de minimus* because it only involved clothes and a toy is negated by the following factors. First, the officers were told by the IAB undercover that the property was placed in the washing machine by an unknown male who had been chased by police. When questioned by Department investigators, the initial responding officers stated that they believed that the anti-crime team was chasing the unknown male. That team, which included these two subject officers, was called and responded. Upon hearing of the pursuit, they tried to contact a second anti-crime team in the area who they believed might have been involved in the pursuit. This attempt was not successful, but it illustrated that the subject officers believed the clothes and toy might have been involved in a crime. Moreover, most of the clothes still had the store alarm tags attached, giving the appearance that this property was stolen. There was no indication that any of these officers were concerned that their misconduct would be reported to IAB or that they could be penalized for taking this property. As the Department is supposed to cultivate an attitude of zero tolerance for corruption, the attitude displayed by these officers is disturbing, in and of itself. The brazen behavior displayed by the subject officers in dividing up the property in open view and in the presence of a sergeant is also troubling. Finally, one of the officers, who was not one of the two subjects here, was a probationary police officer at the time of the incident and was exposed to and participated in these corrupt acts.¹³¹

¹³⁰ In fact, one of these two officers asked the undercover officer whether she wanted the property, although he denied making this statement in his official Department interview.

¹³¹ At the time of the adjudication of these two cases, DAO was awaiting a decision from the Department's Employee Management Division regarding whether the Probationary Police Officer would be summarily terminated or whether charges would be prosecuted against her.

Had there not been a leak to the officers involved that this was an integrity test, this property would undoubtedly not have been vouchered.¹³² When subsequently questioned about what occurred, the subject officers made false statements in an attempt to explain their actions and the actions of their fellow officers. Both of these officers denied being informed that this was an integrity test, thereby further hindering the investigation into this matter. The Commission believed that these officers should have been separated from the Department. Failure to do so sends the wrong message, especially given the peculiarly brazen and open nature of the conduct of these officers.

The third case involved an officer who had been a member of the service for approximately two years when the following misconduct occurred.¹³³ The subject officer reported sick one day and again the next day. When a member of the “sick desk” immediately called the subject officer back on the second day, her mother answered and stated that the subject officer was sleeping. The “sick desk” member told the subject officer's mother that he had just spoken with the subject officer. Her mother repeated that the subject officer was sleeping and hung up the telephone. Approximately 20 minutes later, the subject officer called the “sick desk” back and requested permission to leave her residence to go to the supermarket. Although permission was granted, the matter was referred to the Absence and Control Investigations Unit (ACU).¹³⁴ Five hours later, the subject officer reported to the “sick desk” sergeant that she had returned to her residence. When questioned why the trip to the supermarket had taken so long, the subject officer reported that she had also run other

¹³² The original source of the leak was never confirmed. In one of the official Department interviews with one of the responding officers who was suspected to be the source of the leak, he stated that there were rumors around the precinct that he had failed an integrity test. However, he denied being told by anyone that this incident was an integrity test before he was placed on modified duty. In a later statement, he stated that his attorney informed him that this had been a test. This officer was not one of the subject officers discussed here. As indicated above, this officer was terminated as a result of this case and another set of charges and specifications. *See supra* at p. 62, fn. 129.

¹³³ Charges were not filed until more than a year after the misconduct, and the respondent did not plead guilty until more than three years after the incident.

¹³⁴ This is the unit within the Department responsible for investigating allegations of sick leave abuse.

errands. The ACU investigator called the subject officer and left a voicemail for her. The subject officer called back almost three hours later and stated she was in her residence. When the investigator, who was present at her residence, asked to be buzzed up, the subject officer responded “okay” and hung up the telephone. No one answered the door. The ACU investigator finally gained entry to the subject officer's residence an hour later, through her sister. The subject officer's mother told the investigator that the subject officer had left the residence over an hour earlier, which was before the subject officer informed the investigator that she was back in her residence.

Five hours later, the subject officer called the investigator again and stated she was at the hospital with leg pains and had been there for six hours. When the investigator questioned the respondent about her whereabouts earlier in the day, she stated that she had been at the supermarket. After the investigator confronted the subject officer by stating that he would obtain the security camera video from that store, the respondent recanted and stated that she actually had been at a clothing store. When the investigator asked to see the receipts from the clothing store, the subject officer recanted again and stated that she had been at a friend's house in another borough. However, she could not provide an address. When asked why she did not answer her telephone after their initial contact six hours earlier, the subject officer stated that her telephone had died. Hospital records indicated that the subject officer arrived there only 10 minutes before she called the ACU investigator the second time. Furthermore, the subject officer's cellular telephone records indicated that the subject officer's telephone was in constant use during most of the day, and had been used from an out-of-state location.

In her official Department interview, the subject officer gave yet another false version of her whereabouts. Further, the subject officer claimed not to recall parts of her conversations with the ACU investigator from two weeks earlier. The subject officer provided more than a mere denial of misconduct, instead creating a false scenario of events, warranting termination under the Department's current false statement policy.

Instead, the subject officer was placed on dismissal probation, suspended for 30 days, and forfeited an additional 30 vacation days. The subject officer told lie after lie, constantly changing her story when confronted with the possibility of her lies being revealed. Indeed, based on the paperwork reviewed by the Commission, it did not appear that the subject officer was ever forthcoming regarding her whereabouts that day. Also noteworthy is the fact that the subject officer's probationary period had just expired. For these reasons, the subject officer's employment should have been terminated.

The fourth case involved a 24-year member of the service who had been administratively disciplined once, 14 years earlier, for being unfit for duty. He was charged, based on the following conduct, with three separate specifications for Falsifying Business Records in the Second Degree, a specification for Offering a False Instrument for Filing in the First Degree, and a specification for making a punishable false written statement. While the respondent was trying to obtain search warrants from an assistant district attorney, he learned that the subject of one of his investigations had been arrested. The respondent informed the supervising assistant district attorney of this arrest, and was instructed by her to work with another assigned assistant district attorney the following day to prepare the criminal court complaints. The respondent was assigned the arrest and completed the arrest paperwork and the criminal court complaints. The respondent falsely indicated on this paperwork that he had witnessed the events leading up to the arrest of the defendant. The supervising assistant district attorney noticed that the affidavit attached to the criminal court complaint contained false information, as the respondent had been in her office at the time he placed himself at the scene of the arrest. The assigned assistant district attorney stated that the respondent had provided him with the information contained in the affidavit. The supervisor spoke with the respondent, who indicated that he had made a mistake, and the District Attorney's office declined to present the case to the Grand Jury.

In addition to the affidavit, all of the property clerk invoices prepared by the

respondent indicated that he had recovered the drugs and money that were vouchered, when in fact, he had not. His memo book also contained entries placing him at the scene of the events leading up to the arrest. When questioned about his actions, the respondent blamed his supervisor for forcing him to take the arrest, and blamed the assistant district attorney for rushing him to complete the paperwork. When questioned about the property clerk invoices, the respondent stated that although he did not know who actually recovered the currency and drugs, he “recovered the items at the precinct.” When confronted with his false memo book entries, the respondent admitted that he had made those entries days after the incident, when he learned that he was about to be placed on modified duty.

In recommending a penalty of dismissal probation and the forfeiture of 30 vacation days, the assistant advocate cited as precedent a case the Commission discussed in its last Annual Report.¹³⁵ In that case, the respondent represented to an assistant district attorney that the handwritten copies of arrest and complaint reports that the respondent had created were the original reports prepared by other officers. That respondent also signed the names of the arresting officers on these reports and signed his own name as the supervisor. When questioned, the respondent claimed that the assistant district attorney kept pressuring him for the original reports, which he could not retrieve. The respondent forfeited 30 vacation days. The Commission commented that, in addition to more training, the respondent should have been placed on dismissal probation. Unlike that case, the respondent here attempted to cover up his wrongdoing by making false entries in his memo book solely to support the other documents that he had falsely prepared. This provided an additional layer of misconduct. Also, in this case, the criminal prosecution was adversely affected by the respondent's falsehoods. The Commission believed that this respondent should have been terminated from the Department pursuant to the Department's false statement policy.

The fifth case involved the issuance of a fictitious summons. The subject officer was a 12-year veteran with no prior disciplinary history, above-average performance evaluations, and 18

¹³⁵ See *Fourteenth Annual Report* (February 2012) at pp. 36-37.

chronic sick designations. The misconduct was discovered after the complainant received a notice that he was convicted by default on a 2010 summons and was fined \$100. The summons had been issued by the subject officer for driving while talking on a cellular telephone. The complainant denied receiving a summons in 2010 for speaking on a cellular telephone, but stated that three years earlier, the subject officer had issued him a summons for failing to have insurance, which resulted in the complainant's license being revoked. He also stated that the vehicle to which the summons was issued was not on the road when the later summons was issued. The summons contained all of the complainant's information except the license plate number, which was off by one letter.

When questioned by IAB, the subject officer admitted to issuing the fraudulent summons. He stated that he randomly chose a summons from his locker to alter because he believed that he was one summons short of the borough requirements for a cellular telephone initiative that was due later that day. He had hoped that by altering the license plate number, the summons would not come back to the complainant. The subject officer stated that this was the only time he had falsified a summons, which was supported by IAB's findings.

For this misconduct, the subject officer forfeited 15 vacation days. However, a substantially greater penalty should have been imposed. While this may have been the only time the subject officer falsified a summons, he purposely swore to a document that falsely accused an innocent person of a moving violation. The subject officer's deliberate action resulted in the complainant having to incur inconvenience to resolve the situation, and could have had more significant consequences. The fact that the subject officer changed the license plate by one letter and hoped that the information would not come back to the complainant demonstrated his awareness that the complainant might be penalized.

The Commission was also troubled by the respondent's stated rationale for falsifying the summons, and hopes that the commanding officer in the relevant borough was questioned to determine

whether undue pressure was placed on members of the service to meet initiative requirements.¹³⁶

2. Charges Involving False Statements Other Than “Official” False Statements

The Commission reviewed 74 cases involving falsehoods that did not constitute “official” false statements governed by the Department's false statement policy. The case break down is described below:

Type of False Statement	Total Number of Cases	Guilty and Separated from the Department	Charges Filed	Guilty and Not Separated from the Department	Not Guilty or Charges Dismissed
False Entries in Department Records ¹³⁷	35 ¹³⁸	4 ¹³⁹	4 ¹⁴⁰	24	2 ¹⁴¹
False Statements to an Investigative Body ¹⁴²	18	4 ¹⁴³	3 ¹⁴⁴	10	1 ¹⁴⁵
Fraud	15 ¹⁴⁶	0	1 ¹⁴⁷	12 ¹⁴⁸	1
Other ¹⁴⁹	6	1	0	5	0

¹³⁶ See *infra* at pp. 75-76 for a more detailed discussion regarding the issue of the manipulation of recorded criminal statistics.

¹³⁷ This category included false statements made in overtime activity sheets, domestic incident reports, complaint reports, monthly activity reports, arrest reports, command log entries, sign in and out logs, roll calls, and parking permit applications.

¹³⁸ Two of these cases involved the same subject officer.

¹³⁹ One of these officers was the subject of two cases involving false entries in Department records.

¹⁴⁰ One officer was terminated by operation of law after he was criminally convicted of a felony. The Department previously had terminated two officers after administrative trials on other matters. One officer retired prior to the adjudication of the charges against him.

¹⁴¹ In one case, although the charge of making false entries in Department records was dismissed on the motion of DAO, the subject officer received discipline in connection with other charges. In the other case, although the charges were dismissed, the matter was referred back to the subject officer's command for discipline at that level.

¹⁴² These included statements to other members of the Department, 911 operators, customs inspectors, members of other local law enforcement agencies, and members of District Attorneys' offices.

¹⁴³ Three of these officers retired as part of negotiated settlements, and one was terminated.

¹⁴⁴ Two of these officers were terminated by operation of law, and one resigned prior to the adjudication of the charges against him.

¹⁴⁵ This officer was found guilty of other specifications that resulted in termination.

¹⁴⁶ Two of these cases involved the same subject officer.

¹⁴⁷ This officer was terminated by operation of law.

¹⁴⁸ One officer had two cases in this category.

¹⁴⁹ These included statements made to arriving and departing airport passengers in an effort to get someone to call 911; deletion of an item of property from a tow pound inventory list to indicate that it had not been inside of the subject officer's vehicle when, in fact, it had been; requests made to a store for payment for hours that had not been worked; statements to colleagues about whether permission had been given by a supervisor to leave post; statements to a responding duty captain; and statements regarding the circumstances of a drug sale where the respondent did not complete any of the arrest or court paperwork.

The Commission disagreed with the penalties imposed in four of these cases. The first case involved an officer who issued a summons for disorderly conduct to a person he thought was a civilian but was actually an undercover IAB officer.¹⁵⁰ In the summons, the respondent alleged that he observed the “civilian” at the location “standing at the corner of the intersection and standing there for over 30 minutes, not moving out of the way for pedestrians who were legally crossing at the crosswalk.” It was also alleged that the civilian's conduct “forced numerous pedestrians to walk in the street.” In fact, the undercover officer simply stood next to a fence, and never blocked pedestrian traffic or the crosswalk. The respondent was charged with two counts of causing false entries to be made in Department records: one for the fabricated version of events on the summons and one for a similar description that he made in his memo book. Despite the respondent's above-average evaluations and excellent sick record, the Commission disagreed with the penalty of dismissal probation and the forfeiture of 30 vacation days. Because the respondent invented a set of circumstances designed to penalize an innocent person, he should have been terminated.

In the second case, the respondent had a domestic dispute with her boyfriend, who was also the father of her youngest child and a member of the service. During the dispute, the respondent threw household items at her boyfriend and damaged some of their furniture, prompting the boyfriend to call 911. While he was on the telephone with 911, the respondent began to scream that her boyfriend was pointing a gun at her and she was afraid he was going to shoot her. Although the boyfriend was holding his firearms, he was not pointing a firearm at her, but he was simply trying to move the firearms away from the respondent into another area of the house. When the police arrived, the respondent recanted her statements and explained that she had only made those allegations because she was angry with her boyfriend. The respondent was not arrested for either the false report to the police or for the domestic incident, but was administratively charged for both. The respondent was required to forfeit 30

¹⁵⁰ A similar scenario was discussed in the *Thirteenth Annual Report* (March 2011) at p. 20.

vacation days¹⁵¹ and to continue to cooperate with the Department's counseling programs.

The respondent was a 10-year member of the service with above-average performance evaluations. Three years prior to this incident, the respondent had forfeited 18 vacation days for harassing another person. Given that she purposely made the false statement so the 911 operator would overhear it, the Commission believed that, at minimum, the respondent should have been placed on dismissal probation. By falsely alleging to 911 that her boyfriend was threatening her with a firearm, the respondent escalated an already volatile situation and placed her boyfriend and her children in danger. Responding officers might have assumed that the situation was more dangerous than it was and adjusted their response accordingly. For this poor judgment and her disciplinary history, the Commission believed that a period of monitoring for this respondent would have been appropriate.

The next two cases involved a single respondent, who was a 12-year veteran at the time of the adjudication of the 2 sets of charges. She had no prior disciplinary history and had received above-average ratings on her performance evaluations. She had a chronic sick history and was rated a 6 out of 10 by her commanding officer.

The first of the two incidents occurred two years after the respondent was appointed to the Department. The respondent was charged with Offering a False Instrument for Filing in the Second Degree. The respondent filed a tax return in which she falsely claimed a child as a dependent even though she had no children. She also claimed childcare expenses for that dependent. Tax returns are sworn documents that are signed with the understanding that false statements therein are subject to criminal perjury charges. As a result of this false information, the respondent received a refund of almost \$1,800, to which she was not entitled. In her official Department interview, the respondent stated that her tax preparer¹⁵² had advised her that she could use the information of a foster child who lived in his acquaintance's home.

¹⁵¹ The First Deputy Commissioner did not agree with this penalty and recommended that the respondent forfeit 45 vacation days. The Police Commissioner disapproved the First Deputy Commissioner's recommendation.

¹⁵² The tax preparer was arrested and criminally prosecuted.

According to the respondent, the tax preparer told her this was legal and that the child would receive a portion of her refund. In justifying the penalty of 45 vacation days, DAO characterized the respondent as having believed she was using false information on her tax returns for a good cause, even though she also personally benefited from the deception.

In the respondent's second case, she attempted to defraud her homeowner's insurance company. According to the respondent, in August 2008, she purchased a marquise-cut diamond ring for \$10,000. In September 2008, the respondent traded in the marquise-cut diamond for an emerald-cut diamond. This cost her an additional \$3,500. The respondent obtained a separate insurance policy specifically for the emerald-cut ring. When she sought to switch insurance coverage for the emerald-cut ring in September 2009 to the company that handled her homeowner's insurance, she provided the homeowner's insurance company with an appraisal for the original marquise-cut ring.

The following month, the homeowner's insurance company requested an updated appraisal of the ring. When the respondent failed to submit this information, the homeowner's insurance company informed her that it would not issue a policy without it. In November 2009, the respondent submitted an appraisal for the emerald-cut diamond ring, claiming that she had just recently upgraded. In December 2009, an insurance policy was issued for that ring. Two weeks after the policy was issued, the respondent submitted a claim to the insurance company stating that she had lost the ring. Three months later, the respondent submitted an additional claim, this time against her homeowner's insurance policy, claiming that the same ring was stolen during a burglary of her home.

After her first claim for reimbursement, she told insurance investigators that she still owned the marquise-cut ring when she first submitted the application to the insurance company, even though this was not true. She also falsely stated that the upgrade to the emerald-cut diamond had cost her between \$8,000 and \$10,000 and had occurred after she submitted her application for insurance the first time. In a subsequent interview with the

insurance investigators, the respondent explained that she had provided the insurance company with the appraisal for the ring she no longer owned because she did not believe it mattered, as the rings were similar in weight and value. In a third interview, the respondent claimed that she had not understood the questions asked of her in the earlier interviews, and admitted that the upgrade had only cost her an additional \$3,500. She explained that she had earlier stated that the upgrade had cost an additional \$8,000 to \$10,000 because she could not recall the actual cost of the ring.

The assistant advocate noted the similarities between the respondent's explanation for the discrepancies in her statements to insurance investigators and her justification for the income tax fraud, in that she claimed to be confused and did not believe she had done anything wrong. The assistant advocate also commented that the respondent's statements to insurance investigators raised concerns about her integrity. DAO recommended that the respondent forfeit 45 vacation days. The Police Commissioner added a period of dismissal probation. The respondent committed two serious frauds. In addition to the income tax fraud involved in the first case, the respondent also committed perjury by signing a document under oath that contained information that she knew to be false. The second case occurred while the respondent was a sergeant and while the first disciplinary case was pending. The Commission believed that based on these circumstances, this officer should have been separated from the Department.

3. Uncharged False Statements

The Commission also evaluated 66 cases in which the officer made some type of false statement that would appear to fall within the ambit of the false statement policy, yet no charge of making a false statement or perjury was brought.¹⁵³ The Commission analyzed these disciplinary cases to determine whether a perjury or making a false statement charge should have been levied.

¹⁵³ In some of these cases, charges of a lesser nature were brought. Four of these cases were also included in the false entries in Department records category. Two cases were also included in the fraud category. Two other cases involved the same officer.

In a prior draft of this report, the Commission commented on a number of cases where it disagreed with the charges levied and believed more serious charges were appropriate. DAO executive staff provided reasons for why these charges were not levied in some of the cases. DAO also volunteered to provide a liaison for the Commission to discuss why perjury and/or false statement charges were not levied in the remainder of these cases and to discuss disciplinary cases that the Commission will review in the future. Based on this discussion, the Commission believes that a more complex analysis is required of these cases and further information is needed before offering our conclusion on the appropriateness of the charges. Therefore, the Commission will examine the underlying investigations in these cases, conduct meetings with Department personnel, and report on this topic in a future report on the Department's treatment of false official statements.

4. Conclusion

The Commission will continue to devote a section of its Annual Report to the discipline imposed in those cases where the officer is found guilty of making a false official statement due to the impact of these falsehoods on the integrity of the criminal justice system and the integrity of the Department. Consistent application of the false statement policy is of utmost importance. It not only enables members of the service to know what they can expect if they make false official statements, but it also sends a clear message to members of the service, as well as the public, that the Department will not tolerate such conduct. The Commission will also continue to study the topic of the Department's investigation and discipline of official false statement allegations and expects to issue a report with its findings and recommendations in the future.

D. Other Categories of Disciplinary Cases

1. Downgrading Criminal Statistics Cases

Among the disciplinary cases reviewed, a number involved the intentional misclassification of crimes reported to the NYPD. All of these cases originated from two precincts, and they are very similar. Felony complaints were either downgraded to misdemeanors or not classified as crimes at all. Discipline in each of the cases resulted in the loss of between 2 and 60 vacation days.

The Commission briefly addressed this issue in its last Annual Report.¹⁵⁴ In the case discussed there, a captain was charged with instructing a sergeant to falsify memo book entries to indicate that a complainant recanted his original allegation of a robbery. This act prevented the complaint report and other Department reports concerning the robbery from being entered into Department computer systems. The captain forfeited 40 vacation days, and the Commission suggested that a more severe penalty was warranted. The Commission noted then, and reiterates in this report, the importance of maintaining the integrity of criminal statistics. The prior case is distinguishable from the cases reviewed this year in that the prior case involved a commanding officer directing a subordinate to falsify Department records, while the cases reviewed this year all involved subordinates who, in the Commission's view, were likely responding to real or perceived pressure from their superiors. Therefore, the Commission agreed that the penalties imposed this year -- which did not include dismissal probation -- were generally sufficient. Commanding officers play an integral role in maintaining the integrity of crime statistics, and they should be dealt with severely if their actions impair that function.

At least 24 incidents¹⁵⁵ of misclassification were found by the Quality Assurance

¹⁵⁴ See *Fourteenth Annual Report* (February 2012) at p. 44, fn. 130.

¹⁵⁵ The Commission measured an incident by actual misclassification of one report. An incident could involve more than one officer. A disciplinary case against one officer could include charges for multiple incidents.

Division in the two commands¹⁵⁶ from which this year's downgrading cases arose.¹⁵⁷ The Commission shares the concern -- discussed periodically in the press -- that policies or practices (real or perceived, express or implied) tending to discourage the robust reporting of serious crime may well exist in some quarters of the Department.¹⁵⁸ Were such policies or practices found to exist -- and we note that if other reasons exist for repeated instances of downgrading, those reasons are not obvious -- they would undermine not only public confidence in crime reporting statistics, but also public confidence in law enforcement in general.¹⁵⁹ Indeed, the Department itself apparently recognizes this concern, as evidenced not only by the initiation of disciplinary cases, but also by the Police Commissioner's appointment in 2011 of the Crime Reporting Review Committee to study this very issue. Given that Committee's purpose, the Commission has not separately undertaken to study the matter, but is reviewing the Committee's report, which was released July 2, 2013, as this Annual Report was being finalized.

2. Ticket-Fixing Cases

The Commission also reviewed a number of disciplinary cases stemming from the "ticket-fixing" investigation that received widespread media attention in 2011. The investigation was initiated by IAB, after an officer was heard on a wiretap in an unrelated investigation attempting to have a ticket "fixed" by another officer. The inquiry developed

¹⁵⁶ One of the precincts referenced was the precinct against which Police Officer Adrian Schoolcraft made allegations. The former commanding officer of that precinct has disciplinary charges pending against him that have not yet been resolved and was transferred. In the other precinct, allegations against the commanding officer were unsubstantiated. There were 21 incidents committed by nine members of the service in this precinct.

¹⁵⁷ Because the discovery of these 24 incidents resulted from audits of two precincts, rather than a Department-wide review, the Commission cannot assess whether this issue is more widespread.

¹⁵⁸ One of the disciplined officers, in an official Department interview, referred to an unspoken order that officers should not "take a [complaint report] number" if it was not necessary, or in instances where a complainant was not interested in "following through." According to this officer, if a complainant was just making a report to replace the property, then classifying the report as something other than an Index Crime was permitted. (Index Crimes include murder, rape, robbery, felony assault, burglary, grand larceny, and auto theft and are used to measure an area's crime rate.)

¹⁵⁹ A policy tending to encourage the downgrading of crimes would essentially represent the other side of the coin from a policy or initiative tending to encourage the issuance of summonses where no crime had been committed. *See* discussion above at pp. 67-69. In both situations, the interests of justice are seriously disserved.

into a major investigation involving multiple commands, which culminated in the arrest and indictment of 16 police officers. In the Commission's view, the "ticket-fixing" investigation demonstrates IAB's ability and willingness to seek out and thoroughly investigate officer misconduct.

In the disciplinary cases involving ticket-fixing reviewed by the Commission, the officers were not the main targets of the criminal investigation and none of these subject officers were arrested. All of the officers received dismissal probation and the forfeiture of vacation days and/or suspension days in varying amounts. Those officers who were involved with preventing a significant number of tickets from being adjudicated were also given a monetary fine. The Commission agreed with the penalties imposed. The officers involved used their positions to circumvent the proper adjudication of summonses, and the penalties dispensed demonstrate the Department's commitment to integrity within its ranks.

ONGOING WORK OF THE COMMISSION

A. Staffing

In January 2012, the Mayor announced an increase in the Commission's budget to add four attorneys to the staff. After an extensive vetting process, three attorneys started with the Commission in September and October of 2012.¹⁶⁰ These attorneys have attended the majority of the training classes given to new IAB investigators. Despite their short tenure, they are responsible for much of the work discussed in this report. It is the Commission's hope that with the addition of this staff, we will be able to examine and report on other Department policies outside of IAB investigations and the administrative disciplinary system.

In the *Fourteenth Annual Report*, the Commission announced the resignation of two of its Commissioners.¹⁶¹ Since the publication of that report, the Mayor's Office appointed a new Commissioner. Her biography can be found in the Commissioners' Biographies section immediately following the end of this report.

B. Steering Committee Meetings

Throughout the year, Commission staff and the Commissioners attended IAB steering meetings. These meetings are led by IAB's Steering Committee, consisting of IAB's executive staff, including the Executive Officer, three Deputy Chiefs, and two Inspectors. It is chaired by the Chief of IAB. At these meetings, commanding officers from each IAB group present their group's most serious cases and some of the longest-pending cases,¹⁶² and they receive investigative recommendations. In tracking these recommendations, the Commission observed that investigators are following the recommendations of the Steering Committee, and that such recommendations serve to promote thorough investigations and timely closures.

¹⁶⁰ The fourth attorney began her employment with the Commission in July 2013, after this report was drafted.

¹⁶¹ *Fourteenth Annual Report* (February 2012) at p. 2, fn. 6.

¹⁶² This describes the basic steering meeting. There are other steering meetings where cases that are older than a certain period or that include an analysis of the corruption complaints in each of the commands within the specific group's jurisdiction are discussed. There are, less frequently, other specialized steering meetings where specific issues, such as an increase in complaints within a particular command, are discussed.

In the coming year, the Commission intends to choose newly-opened cases presented at the Steering Committee meetings to follow as part of its monitoring of pending IAB cases. This would allow the Commission to participate in questioning individual commanding officers and to bring to the attention of the Steering Committee any facts and/or issues that may not be included as part of the case presentation.

With the addition of our extra staff, the Commission is also considering attending the Steering Committee meetings that IAB holds with the Borough and Bureau Investigations Units.¹⁶³

C. Intensive Steering Committee Review

Each year between May and September, the Commission staff attends intensive steering meetings. At these meetings, each IAB group's commanding officers present their entire caseload, excluding those cases they present at regular steering meetings. This provides the Commission and the Steering Committee with the opportunity to acquaint themselves with cases that would not receive the same attention as those normally presented. The Commission observed that at times, the Steering Committee used this as an opportunity to reassess cases, sometimes requiring commanding officers to present them at the main steering meetings, where those cases would receive more direct attention and be followed until the investigations were concluded. This ensures that the Commission and IAB's executive staff is kept apprised of the progress of significant investigations and helps to ensure that serious allegations are being diligently and thoroughly investigated.

D. IAB Briefings To The Police Commissioner

On a monthly basis, the Chief of IAB meets with the Police Commissioner to brief him on significant cases. Also in attendance is the First Deputy Commissioner, the Chief of Department, the Deputy Commissioner for Legal Matters, the Special Counsel to the Police

¹⁶³ See the Commission's report *Monitoring Study: A Review of Investigations Conducted by the NYPD's Borough and Bureau Investigative Units* (January 2009). Attendance at these Steering Committee meetings would enable the Commission to conduct some follow-up on the recommendations it made in that report.

Commissioner, the Department Advocate, and IAB's Executive Officer. The Commissioners, the Executive Director, and the Deputy Executive Director of the Commission also attend. At these briefings, IAB group commanders present cases selected by the Commission's Executive Director.¹⁶⁴ These presentations describe the investigative steps, the results of those steps, and any anticipated investigative actions. Commissioners frequently question the presenters and speak directly with the Police Commissioner about the progress of each case. This past year, briefings covered investigations of perjury, criminal association, excessive force, altering summonses, attempted kidnapping, indecent exposure, and other illegal activities.

E. Meetings With District Attorneys' Offices And United States Attorneys' Offices

The Commission further fulfills its mandate to monitor corruption by meeting regularly with federal and state prosecutors responsible for the investigation and prosecution of police corruption. These meetings allow the Commission to explore any concerns these agencies have, their perceptions about the Department, particularly IAB, their working relationship with IAB, and their opinions regarding the quality of IAB's investigations and proactive measures to detect corruption.

In 2011, the Commission met with the District Attorneys and representatives from their offices from New York County, Kings County, Richmond County, and Queens County.¹⁶⁵ In 2012, the Commission met with representatives from the Bronx County District Attorney's Office who were responsible for prosecuting allegations involving police corruption. The Commission also met with the United States Attorney for the Southern District of New York and his representatives, and with representatives from the United States Attorney's Office for the Eastern District of New York.

The Commission plans to revisit the other four District Attorneys' offices in the coming year.

¹⁶⁴ The Executive Director chooses the cases for these presentations from cases highlighted by IAB and from cases she has heard about through either the staff's attendance at steering meetings or through case reviews.

¹⁶⁵ See *Fourteenth Annual Report* (February 2012) at p. 48.

F. Other Matters

There has been much public attention given to the nature of the Department's stop-and-frisk policy, and whether that policy should be curtailed or otherwise limited. The Commission believes this debate is beyond our jurisdiction. To the extent implementation of the stop-and-frisk policy gives rise to corruption-related issues, we will address those issues as they are presented.

G. Interim And Operation Orders

The Commission receives all Interim and Operation Orders issued by the Department. All orders are reviewed and archived so that the Commission is able to monitor any changes in Department policies or procedures related to the Commission's mandate.

H. Corruption And Misconduct Comparison Reports

On a monthly basis, the Commission receives a copy of *IAB's Corruption and Misconduct Complaint Comparison Report*. This report presents a statistical analysis of corruption allegations, which compares annual and monthly statistics by allegation, borough, and bureau. This analysis enables the Police Commissioner, the Chief of IAB, and IAB's senior staff to identify corruption trends. Each year, the Commission also receives a copy of IAB's Annual Report. Included in this report is a discussion of the proactive measures that IAB has taken to detect corruption or serious misconduct.

I. Complaint Logs

Occasionally, the Commission receives complaints from the public against members of the Department. The Commission refers all of these complaints to IAB or the appropriate investigative entity, and keeps a record in the event that any follow-up is necessary.

From December 16, 2011 through December 31, 2012, the Commission received 249 complaints. Below is a breakdown of those complaints:

Nature of Allegation	Number of Complaints
Abuse of Authority Non-F.A.D.O. ¹⁶⁶	7
Alcohol-Related	2
Criminal Association/Criminal Activity/Larceny	5
Disagrees with Department Policy or Actions	10
Disputed Arrest or Summons	35
Domestic Dispute	4
Downgrade of Criminal Statistics	1
F.A.D.O	44
Failure to Take Police Action/Refused to Take Report	38
False Statement/Falsifying Business Records/Falsifying Arrest Report	5
Flaking	2
Harassment/Menacing	8
Improperly Displaying Shield or Uniform/Impersonation	5
Missing Property	2
Misuse of NYPD Computer/Misuse of Placard	6
Misuse of Time	5
Narcotics Allegation	3
Off-Duty Misconduct	2
Other - Non NYPD	23
Other - Miscellaneous	14
Retaliation	1
Sexual Misconduct/Harassment	3
Stop and Frisk	7
Unable to Determine the Exact Nature of Complaint	14
Unauthorized Employment	3

¹⁶⁶ F.A.D.O. stands for allegations of wrongful or excessive force, abuse of authority, discourtesy, or offensive language. The Commission usually refers these complaints to the CCRB.

COMMISSIONER BIOGRAPHIES

Michael F. Armstrong

Chairperson

Michael F. Armstrong is a partner at Lankler, Carragher & Horwitz LLP where he focuses on complex civil litigation, white-collar criminal and regulatory matters, and internal corporate investigations. Mr. Armstrong has served as an Assistant United States Attorney in the Southern District of New York where he was Chief of the Securities Fraud Unit, Chief Counsel to the “Knapp Commission,” which investigated allegations of police corruption in the New York City Police Department, and District Attorney for Queens County, New York. He also has served as Counsel to the New York Urban League and Advisor to New York Attorney General Andrew Cuomo regarding the investigation of allegations of political influence in the State Police. Mr. Armstrong earned his LLB from Harvard Law School and his BA from Yale University.

Vernon S. Broderick

Vernon S. Broderick is a litigator at Weil, Gotshal & Manges, where he concentrates on complex commercial litigation. He represents corporations and executives in matters related to white-collar crime and government investigations. Mr. Broderick served as an Assistant United States Attorney for the Southern District of New York for eight years. While at the United States Attorney's Office, he served as Chief of the Violent Gangs Unit and, investigated and prosecuted cases involving organized crime, international narcotics trafficking, and violent crimes including murder, kidnapping, assault, and robbery extortion. Mr. Broderick was also a recipient of the Justice Department Director's Award for Superior Performance as an Assistant United States Attorney in both 1997 and 1998. Mr. Broderick earned his JD from Harvard Law School.

Kathy Hirata Chin

Kathy Hirata Chin is a partner at Cadwalader, Wickersham & Taft, where she is the senior litigation partner in the firm's healthcare/not-for-profit practice group. Ms. Chin served as a Commissioner on the New York City Planning Commission from 1995 to 2001. She has also served on the Federal Magistrate Judge Merit Selection Panel for the Eastern District of New York, on Governor Mario M. Cuomo's Judicial Screening Committee for the First Judicial Department, on the Gender Bias Committee of the Second Circuit Task Force regarding Gender, Racial, and Ethnic Fairness, and on Chief Judge Judith S. Kaye's Commission to Promote Public Confidence in Judicial Elections. She is currently a member of the Attorney Emeritus Advisory Council and of the Commercial Division Advisory Council, appointed by Chief Judge Jonathan Lippman. Ms. Chin earned her JD from Columbia University School of Law.

Deborah E. Landis

Deborah E. Landis is a consultant who provides investigative assistance and litigation support to other attorneys. She focuses primarily on white-collar criminal and regulatory matters. Ms. Landis served as an Assistant United States Attorney for the Southern District of New York for more than twenty years, investigating and prosecuting cases involving police corruption, perjury, narcotics trafficking, racketeering, money-laundering, tax fraud, and other fraud on the government. As Chief of the General Crimes Unit and as Senior Litigation Counsel, she also had responsibility for supervising and teaching other prosecutors. During 2000, Ms. Landis served the Department of Justice in Washington, D.C., acting as an Associate Deputy Attorney General and as DOJ's Special Counsel for Health Care Fraud. Ms. Landis received many awards for her work as a prosecutor, including the Henry L. Stimson Medal for Outstanding Contributions to the Office of the United States Attorney, which was awarded by the Association of the Bar of the City of New York (1999), and the Attorney General's John Marshall Award for Trial of Litigation (2000). Ms. Landis has also taught Trial Advocacy at the Harvard Law School for many years. Ms. Landis earned her JD from the University of Wisconsin Law School.

James D. Zirin

James D. Zirin is Senior Counsel at Sidley Austin LLP. He has been a trial lawyer for over 40 years, handling a wide variety of white-collar criminal and complex commercial litigation. Mr. Zirin is a former Assistant United States Attorney for the Southern District of New York. He is also a fellow of the American College of Trial Lawyers, a trustee of New York Law School, a member of the advisory board of the Woodrow Wilson School of Public and International Affairs at Princeton University, a former director and member of the executive committee of the Legal Aid Society, and a past vice president and trustee of the Federal Bar Council. He is a member of the Council on Foreign Relations. Mr. Zirin earned his JD from the University of Michigan Law School.

COMMISSION STAFF

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Christopher Tellet, Confidential Investigator
Cristina Stuto, Office Manager

Executive Order



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EXECUTIVE ORDER NO. 18

February 27, 1995

ESTABLISHMENT OF COMMISSION
TO COMBAT POLICE CORRUPTION

WHEREAS, an honest and effective police force is essential to the public health, safety and welfare; and

WHEREAS, the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, chaired by Milton Mollen, (the "Mollen Commission") has recently concluded an investigation of the nature, extent and causes of police corruption today; and

WHEREAS, the Mollen Commission's Report finds that the vast majority of New York City police officers are honest and hard-working, and serve the City with skill and dedication every day, and that the current leadership of the Police Department has a firm commitment to fighting police corruption among those few officers who betray the public trust and tarnish the Police Department in the eyes of the public; and

WHEREAS, the Mollen Commission determined that the primary responsibility for combatting corruption in the Police Department rests with the Police

Department, and that the Police Department must be the first line of defense against police corruption;

WHEREAS, the Mollen Commission has recommended the establishment of an independent monitor, in the form of a Police Commission, to monitor and evaluate Police Department anti-corruption measures and to ensure that the Police Department remains vigilant in combatting corruption; and

WHEREAS, such a Police Commission provides the public with assurance that the Police Department is implementing and maintaining an effective anti-corruption program; and

WHEREAS, the Mayor and the Police Commissioner are accountable for combatting police corruption; and

WHEREAS, the establishment of a Police Commission can assist the Mayor and Police Commissioner in assessing the effectiveness of the Police Department's implementation and maintenance of anti-corruption efforts; and

WHEREAS, the District Attorneys, the United States Attorneys, and other government departments and agencies have committed resources and personnel to the investigation and prosecution of police corruption, and it is desirable that a Police Commission not supplant such investigative efforts;

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it hereby is ordered:

Section 1. Establishment Of Commission.

a. There hereby is established a Police Commission (the "Commission") which shall consist of five members appointed by the Mayor, who shall be residents of the City of New York or shall maintain a place of business in the City of New York. Each of the members shall serve without compensation. The Commission shall include among its members persons having law enforcement experience. The Mayor shall appoint the Chairperson from among the members. -

b. Of the members first appointed, the Chairperson shall be appointed for a term ending December 31, 1998; two of the members shall be appointed for terms ending December 31, 1997; and two of the members shall be appointed for terms ending December 31, 1996. Upon the expiration of such initial terms, all members shall be appointed for a term of four years. Vacancies occurring otherwise than by expiration of a term shall be filled for the unexpired term.

c. Each member shall continue to serve until the appointment of his successor.

d. Any member shall be removable for cause by the Mayor, upon charges and after a hearing.

Section 2. Duties.

a. Monitoring the Performance of Anti-Corruption Systems. The Commission shall perform audits, studies and analyses to assess the quality of the Police Department's systems for combatting corruption, including but not limited to audits, studies

and analyses regarding the following:

(i) the Police Department's development and implementation of anti-corruption policies and procedures;

(ii) the effectiveness of the Police Department's systems and methods for gathering intelligence on corrupt activities and investigating allegations of corruption;

(iii) the effectiveness of the Police Department's implementation of a system of command accountability, supervision and training for corruption matters;

(iv) the effectiveness of the procedures used by the Police Department to involve all members of the Department in combatting corruption; and

(v) such other policies and procedures, without limitation, of the Police Department relating to corruption controls as the Commission deems appropriate.

b. Monitoring Agency Conditions. The Commission shall perform audits, studies and analyses of conditions and attitudes within the Police Department that may tolerate, nurture or perpetuate corruption, and shall evaluate the effectiveness of Police Department policies and procedures to combat such conditions and attitudes. In the performance of this function, the Commission shall maintain liaison with community groups and precinct councils and shall consult with law enforcement agencies of federal, state and local government and others, as appropriate, to provide the Police Department with input about their perception of police corruption and the Department's efforts to combat police corruption.

c. **Corruption Complaints from the Public.** The Commission shall be authorized to accept complaints or other information from any source regarding specific allegations of police corruption and, subject to the provisions of Section 4, shall refer such complaints or other information to the Police Department and such other agency as the Commission determines is appropriate, for investigation and/or prosecution. The Commission may monitor the investigation of any such complaints referred to the Police Department to the extent the Commission deems appropriate in order to perform its duties as set forth herein.

Section 3. Investigations.

a. The Police Commissioner shall ensure and mandate the full cooperation of all members of the Police Department with the Commission in the performance of audits, studies or analyses undertaken pursuant to this Order, and shall provide that interference with or obstruction of the Commission's functions shall constitute cause for removal from office or other employment, or for other appropriate penalty. The Police Department also shall provide to the Commission upon request any and all documents, records, reports, files or other information relating to any matter within the jurisdiction of the Commission, except such documents as cannot be so disclosed according to law.

b. The Police Department remains responsible for conducting investigations of specific allegations of corruption made against Police Department personnel, and the Commission shall not investigate such matters except where the

Commission and the Commissioner of the City Department of Investigation (the "DOI"), with the approval of the Mayor, determine that exceptional circumstances exist in which the assessment of the Police Department's anti-corruption systems requires the investigation of an underlying allegation of corruption made against Police Department personnel.

c. The Commission, in cooperation with the DOI, shall take all reasonable measures to ensure that any hearings or investigations held pursuant to this Executive Order do not inappropriately interfere with ongoing law enforcement matters being undertaken by other law enforcement agencies.

d. Any hearings or investigations undertaken by the Commission may include the issuance of subpoenas by the DOI in accordance with the DOI's powers under Chapter 34 of the New York City Charter, to the extent that the Commission and the DOI Commissioner jointly determine is appropriate.

Section 4. Reporting to the Police Department.

a. The Commission shall promptly notify the Police Commissioner of all allegations of corrupt police activity or other police misconduct and of any investigations undertaken pursuant to this Order. The Commission also shall make regular reports to the Police Commissioner regarding its activities, including the progress of audits, studies and analyses prepared pursuant to this Order.

b. The Commission may exclude a matter from the notifications and reports required by this Section and Section 2(c) only where the Commission and the DOI Commissioner, with the approval of the Mayor, determine either that the matter concerns

the activities of the Police Commissioner or would create an appearance of impropriety, and that reporting on the matter would impair the Commission's ability to perform its duties under this Order.

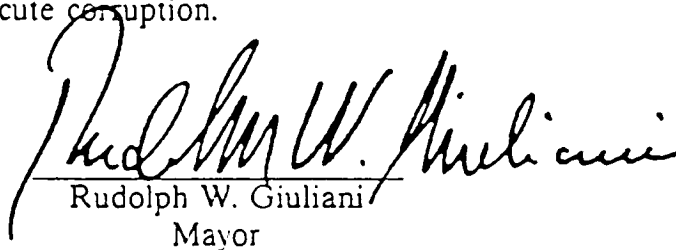
Section 5. Reporting to the Mayor.

a. The Commission shall report to the Mayor as to all its activities, without limitation, at such times as the Mayor may request, and as otherwise may be required by this Order.

b. The Commission shall provide the Mayor no later than each anniversary of the Commission's establishment an annual report which shall contain a thorough evaluation of the effectiveness of the Police Department's systems for preventing, detecting and investigating corruption, and the effectiveness of the Police Department's efforts to change any Department conditions and attitudes which may tolerate, nurture or perpetuate corruption, including any recommendations for modifications in the Police Department's systems for combatting corruption. The annual report further shall contain any recommendations for modifications to the duties or the jurisdiction of the Commission as set forth in this Executive Order to enable the Commission to most effectively fulfill its mandate to ensure that the Police Department implements and maintains effective anti-corruption programs.

Section 6. Staff. The Commission shall employ an Executive Director and other appropriate staff sufficient to organize and direct the audits, studies and analyses set forth in Section 2 of this Order from appropriations made available therefor. The Commission from time to time may supplement its staff with personnel of the DOI, including investigatory personnel as may be necessary, to the extent that the Commission and the DOI Commissioner determine is appropriate.

Section 7. Construction With Other Laws. Nothing in this Order shall be construed to limit or interfere with the existing powers and duties of the Police Department, the DOI, the District Attorneys, the United States Attorneys for the Southern and Eastern Districts of New York, or of any other department or agency of federal, state or city government to investigate and prosecute corruption.


Rudolph W. Giuliani
Mayor